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Did Bankruptcy Reform Fail?

An Empirical Study of Consumer Debtors

by

*Robert M. Lawless, Angela K. Littwin, Katherine M. Porter,
John A. E. Pottow, Deborah K. Thorne, and Elizabeth Warren**

I. INTRODUCTION

Before 2005, many people went broke and many filed for bankruptcy. After 2005, many people still go broke, but not so many file for bankruptcy.

Why has the number of bankruptcies declined? Surely it is not the economy. All throughout the 2000s, families have been under increasing economic pressure. Median family incomes have declined,¹ basic expenses have risen,²

*Professor Pottow is corresponding author for this manuscript. The co-authors' names appear in alphabetical order, however, to reflect the significant contribution made by each in various ways beyond writing the draft, including statistical analysis, data gathering, and study design. In addition to the six co-authors, four others serve as co-principal investigators of the 2007 Consumer Bankruptcy Project ("CBP"): David U. Himmelstein, Associate Professor of Medicine, Harvard Medical School; Melissa B. Jacoby, George R. Ward Professor of Law, University of North Carolina School of Law; Teresa A. Sullivan, Provost and Executive Vice President for Academic Affairs, and Professor of Sociology, University of Michigan, Ann Arbor; and Steffie Woolhandler, Associate Professor of Medicine, Harvard Medical School. We are deeply grateful to our four colleagues for all their assistance with this project. All members of the CBP express gratitude to our research assistants who helped with this article, Nossion Stoll, University of Michigan J.D. Class of 2008, Gina Lavarda, University of Iowa J.D. Class of 2009, and Elizabeth Ogburn, Ph.D. Candidate in Biostatistics, Harvard University; our database designers and supervisors, Alex Warren and Mark Thorne; our administrative coordinator, Carol Bateson; the leader of the data entry and telephone survey team, Denise McDaniel; and all the bankruptcy court and AACER personnel (especially Mike Bickford at the latter) without whom we would not have been able to gather a national sample. Funding was provided in part through grants from the American Association of Retired Persons, the Harvard Law School, the Robert Wood Johnson Foundation, the University of Michigan Office of Vice President for Research, and the University of Michigan Law School. The co-authors' institutional affiliations follow: Robert M. Lawless, Professor of Law and Galowich-Huizenga Faculty Scholar, University of Illinois College of Law (rlawless@illinois.edu); Angela K. Littwin, Assistant Professor of Law, University of Texas School of Law (alittwin@law.utexas.edu); Katherine M. Porter, Associate Professor of Law, University of Iowa College of Law (katie-porter@uiowa.edu); John A. E. Pottow, Professor of Law, University of Michigan Law School (pottow@umich.edu); Deborah K. Thorne, Assistant Professor of Sociology, Ohio University (thornd@ohio.edu); Elizabeth Warren, Leo Gottlieb Professor of Law, Harvard Law School (cbateson@law.harvard.edu).

¹Median family income peaked in 2000 at \$61,049 and has not yet returned to that level. U.S. CENSUS BUREAU, MONEY INCOME OF FAMILIES—PERCENT DISTRIBUTION BY INCOME LEVEL, RACE, AND HISPANIC ORIGIN, Table 673, available at <http://www.census.gov/compendia/statab/tables/08s0673.xls> (last visited Sept. 3, 2008) (constant 2007 dollars).

and families are shouldering unprecedented debt loads.³ Defaults remain high for credit cards⁴ and car loans,⁵ while mortgage foreclosures have soared.⁶ By 2008, over half of all Americans reported that their incomes were falling behind their cost of living.⁷ These data all point in the same direction: people are still going broke in large numbers.

Yet despite this evidence of growing financial distress, the number of families seeking bankruptcy protection dropped abruptly after adoption of the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA").⁸ Some of this shift can be explained by a sharp increase in the number of people filing shortly before the amendments went into effect – a

²See Bureau of Labor Statistics Consumer Expenditure Survey (reporting survey data's finding of consumer expenditure increases in 2005 and 2006), available at <http://www.bls.gov/news.release/cesan.nr0.htm> (press release announcing completion of data).

³By the fourth quarter of 2007, total outstanding consumer debt was approximately \$2557 billion. Federal Reserve Statistical Release, Consumer Credit, G.19, available at <http://www.federalreserve.gov/releases/g19/Current>. In 2001 total outstanding consumer credit was \$1963 billion (in 2007 dollars), see *id.* at Release Date Jan. 8, 2007, available at <http://www.federalreserve.gov/releases/g19/20070108>, which means there was an increase of \$594 billion in the six-year time span.

⁴The Federal Reserve Board reports a 4.70% credit card charge-off rate for the first quarter of 2008, an increase of 18% from a year earlier. Federal Reserve Statistical Release, Charge-Off and Delinquency Rates on Loans and Leases at Commercial Banks, available at <http://www.federalreserve.gov/releases/chargeoff/chgallnsa.htm> (last visited Sept. 3, 2008).

⁵See Jenn Abelson, *Entering the Repossession Lane: Default Rate Soars on Auto Loans in Pattern Likened to Mortgage Crisis*, THE BOSTON GLOBE, Mar. 7, 2008, at 1A (reporting increase in regional and national auto foreclosures).

⁶The Mortgage Bankers Association reported that the percentage of loans in the foreclosure process was 2.47% at the end of the first quarter of 2008. The percentage of loans on which foreclosure actions were started during the quarter was 0.99% on a seasonally-adjusted basis. Both the percentage of loans in foreclosure and the percentage of loans on which foreclosure actions were started were the highest since 1979. Press Release, Mortgage Bankers Association, Mortgage Bankers Association National Delinquency Survey (June 5, 2008), available at <http://www.mbaa.org/NewsandMedia/PressCenter/62936.htm>; see also Vikas Bajaj & Michael M. Grynbaum, *A Rising Tide of Mortgage Defaults, Not All on Risky Loans*, N.Y. TIMES, June 6, 2008, at C1 (reporting data from the Mortgage Bankers Association); Robert B. Avery, Kenneth P. Brevoort & Glenn B. Canner, *The 2006 HMDA Data*, FEDERAL RESERVE BULLETIN, Dec. 2007, at A102, available at <http://www.federalreserve.gov/pubs/bulletin/2007/pdf/hmda06final.pdf>.

⁷*Growing Rich-Poor Divide in Affording Necessities: Economic Discontent Deepens as Inflation Concerns Rise*, THE PEW RESEARCH CENTER FOR THE PEOPLE AND THE PRESS, Feb. 14, 2008, at 3, available at <http://people-press.org/reports/pdf/395.pdf>. Seventy-one percent of households making less than \$50,000 annually reported that they were falling behind.

⁸Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (2005). There were 1.6 million filings in the twelve months that ended on June 30, 2005, the last annual period unaffected by the implementation of BAPCPA. Administrative Office of the U.S. Courts, Bankruptcy Statistics, available at <http://www.uscourts.gov/bkrpctystats/statistics.htm#quarterly> (last visited Sept. 3, 2008) (follow "2005 by Chapter" hyperlink under "12-month period ending June"). Because our sample was generated using data from the Automated Access to Court Electronic Records ("AACER"), all 2006 and 2007 national bankruptcy filing statistics also are from AACER. Filing data before 2006 are not available from AACER. Because data from the Administrative Office of the U.S. Courts ("AO") include transferred and reopened cases as new filings and the AACER data do not, the AO data may overstate bankruptcy filings by 2 to 3%. See Posting of Robert M. Lawless to Credit Slips, *Why*

sudden rush to the courthouse of “transition filings” that might have drained the pool of troubled families that otherwise would have filed over a longer time horizon.⁹ But the number of bankruptcy filings continued to remain low, even after the transition. If bankruptcy filings had continued at the same level as they had been immediately before enactment of BAPCPA, about 1.6 million petitions would have been filed in 2007 – about twice as many as the 827,000 bankruptcies that actually occurred.¹⁰ The sharp reduction in filings after the amendments represents about 800,000 families that would have filed but did not. In the face of deteriorating economic circumstances, the absence of these families from the bankruptcy system is strong evidence that BAPCPA has had a powerful effect on families in financial trouble.

For some, the plunge in bankruptcy filings alone proves that BAPCPA has been a success, with no further discussion required.¹¹ But a meaningful measure of success requires more nuanced analysis. In lobbying for the passage of BAPCPA, proponents promised it was not a random and arbitrary tool designed solely to cut the bankruptcy rolls, but a carefully tailored and principled mechanism to screen out the can-pays and high-income crowd who were purportedly abusing the bankruptcy system:

[P]eople under the median income in our country who apply for bankruptcy almost certainly will be accorded almost automatically the fresh start which their financial circumstances dictate. But we also said that if the income is over the median income, then that set of financial circumstances should be more closely scrutinized to determine if any money can be repaid to this debt that has been accumulated. That is a very balanced and a fair way to approach the economic system of our Nation.¹²

I Use AACER Filing Statistics, <http://www.creditslips.org/creditslips/2008/05/why-i-use-aacer.html> (May 13, 2008).

⁹Administrative Office of the U.S. Courts reports that there were 667,431 bankruptcy filings in the final quarter of 2005 (630,228 of which were filed in October 2005—before BAPCPA went into effect). Contrast this to the 371,668 filings reported in the fourth quarter of 2004. Press Release, Administrative Office of the U.S. Courts, Bankruptcy Filings Surge in Calendar Year 2005 (Mar. 24, 2006), available at http://www.uscourts.gov/Press_Releases/bankruptcyfilings032406.html.

¹⁰See *supra* note 8.

¹¹“We have seen bankruptcy rates fall dramatically from about 2 million bankruptcies in 2005 to the point where I doubt there will be over 1 million bankruptcies in 2006, if current trends continue . . . [F]or now, almost one year later, bankruptcy reform seems to have been a success.” 152 CONG. REC. S10647–48 (daily ed. Sept. 29, 2006) (statement of Sen. Grassley). See generally John Poirier, *Personal Bankruptcy Cases Rise Despite Reforms*, REUTERS, June 12, 2006 (“Some people think that merely reducing the number of filings regardless of who they are and what kinds of problems they have is a success. . . .”) (quoting Professor Melissa Jacoby) (internal quotation marks omitted).

¹²145 CONG. REC. 8509 (1999) (statement of Rep. Gekas). See also H.R. REP. NO. 109-031 (I), at 92 (2005), which summarized that a “factor motivating comprehensive reform is that the present bankruptcy

The new law was not the Bankruptcy Numbers Reduction Act; it was the Bankruptcy Abuse Prevention Act. The President himself assured the American people that the change targeted only can-pay debtors.¹³ The lobbyists also promised it was not going to keep bankruptcy's prototypical "honest and unfortunate debtor"¹⁴ with median or below income from getting relief: "People who are truly in need of relief will be able to get it."¹⁵ As one of BAPCPA's most prominent legislative champions summed up:

So that I am crystal clear, people who do not have the ability to repay their debts can still use the bankruptcy system as they would have before. The bill clearly provides that people of limited income can still file under chapter 7 and get that fresh start . . . so their debts can be wiped away, as is done right now.¹⁶

We, the co-investigators of the Consumer Bankruptcy Project, have marshaled data from the first large-scale, national sample of bankrupt households after BAPCPA to examine whether the amendments have had their promised effect. Consistent with a principled analysis, our metric of success is not simply a head count of the number of people filing for bankruptcy. Rather, we examine *who* is filing after 2005 (and, by implication, who has been pushed out of the system). If there is a reduction of can-pay debtors—abusers—in bankruptcy, then BAPCPA should be declared a success. But if the reduction of filers is random and arbitrary, then it should be condemned as a failure that imposes senseless pain on families that need help.

BAPCPA was built upon a controversial "means test" to restrict eligibility for relief under Chapter 7.¹⁷ The central feature of that means test was an income screen: "The heart of this [BAPCPA] bill is the means test. It requires the bankruptcy trustee to examine the income and expenses of high-income debtors and determine whether they have the ability to pay some-

system has loopholes and incentives that allow and—sometimes—even encourage opportunistic personal filings and abuse. . . . [S]ome bankruptcy debtors are able to repay a significant portion of their debts, according to several studies. Current law, however, has no clear mandate requiring these debtors to repay their debts."

¹³President George W. Bush, Remarks at the Signing of Bankruptcy Abuse Prevention and Consumer Protection Act (Apr. 20, 2005), available at <http://www.whitehouse.gov/news/releases/2005/04/20050420-5.html> ("[T]oo many people have abused the bankruptcy laws. They've walked away from debts even when they had the ability to repay them. . . . Under the new law, Americans who have the ability to pay will be required to pay back at least a portion of their debts.").

¹⁴*Hanover Nat. Bank v. Moyses*, 186 U.S. 181, 192 (1902).

¹⁵Holden Lewis, *What Bankruptcy Reform Means to Consumers*, BANKRATE.COM, Mar. 16, 2001, <http://www.bankrate.com/brm/news/pf/20010316a.asp> (quoting Lynne Strang, spokeswoman for the American Financial Services Association).

¹⁶151 CONG. REC. S1856 (daily ed. Mar. 1, 2005) (statement of Sen. Grassley).

¹⁷See 11 U.S.C. § 707(b) (2006).

thing toward their debts.”¹⁸ Accordingly, we use income as our primary metric in examining our sample of post-BAPCPA debtors.

The data indicate that those who filed in 2007 largely have the same income profile as those who filed in 2001; there has been no shift in the income levels of filers that would have occurred if 800,000 high-income abusers had been pushed from the system. These income data suggest that instead of functioning like a sieve, carefully sorting the high-income abusers from those in true need, the amendments’ means test functioned more like a barricade, blocking out hundreds of thousands of struggling families indiscriminately, regardless of their individual income circumstances.

Even worse for consumers, the new data also reveal a dark side to bankruptcy and to the American credit market. Continuing a trend begun in the early 1980s, the families in bankruptcy are much more deeply laden with debt. Their net worth, which has always been negative, sank further, and their debt-to-income ratios rose higher. In short, with each succeeding study over the past twenty-five years of the Consumer Bankruptcy Project, the data show that the families filing for bankruptcy are in ever-increasing financial distress. The 2005 amendments did nothing to halt this trend.

The data showing rising debt loads are consistent with the view that troubled families are delaying bankruptcy—struggling longer with their bills and building up bigger loads of debt before succumbing. The data also support the “sweat box” theory of consumer lending, in which lenders profit if failing customers can be persuaded to make high-interest payments for a few extra months,¹⁹ suggesting that the 2005 amendments delivered a very different benefit to the credit industry than its supporters claimed. By this analysis, creditors gain from BAPCPA less because of any effect on carefully targeted can-pay debtors and more because they have a stronger hand to press the debtors—all debtors, regardless of income—to struggle outside the bankruptcy system.

II. DESCRIPTION OF DATA

This is the first in-depth report of the 2007 Consumer Bankruptcy Project, a joint effort of law professors, sociologists, and physicians.²⁰ We use this occasion to sketch the basic profile of the debtor who files for bankruptcy in the wake of the 2005 amendments and to compare this profile with the one that emerged from similar studies in 1981, 1991, and 2001. All the data reported in this Article are from the Consumer Bankruptcy Project.

¹⁸151 CONG. REC. S1779 (daily ed. Feb. 28, 2005) (remarks of Sen. Specter).

¹⁹Ronald J. Mann, *Consumer Bankruptcy and Credit in the Wake of the 2005 Act: Bankruptcy Reform and the “Sweat Box” of Credit Card Debt*, 2007 U. ILL. L. REV. 375, 398 fig.2.

²⁰For more details on the Consumer Bankruptcy Project, see *infra* Appendix I.

A unique feature of this study is its scope. The 2007 Consumer Bankruptcy Project examines the first nationwide random sample of households in bankruptcy.²¹ The absence of a single, national repository for bankruptcy court records has always required district-by-district data collection; time and resource constraints have generally meant that only a limited number of districts could be analyzed in prior studies. The advent of Automated Access to Court Electronic Records ("AACER"), a private business designed to collect data each day about every bankruptcy case in the country, transformed the data landscape.²² With generous help from Mike Bickford of AACER, we drew a national random sample of debtors filing for bankruptcy in February and March 2007. With the help of bankruptcy courts in every judicial district,²³ we obtained the court records of those sampled debtors through the automated U.S. Courts "PACER" system for online court files.²⁴ Without AACER's data and the access provided by the courts, judges and staff, we could never have collected these data or made this report. We are very grateful for their assistance.

The decision to study debtors who filed for bankruptcy in 2007 was a difficult one. By that date, enough time had plausibly elapsed after the October 1, 2005 effective date of BAPCPA so that the enforcement of the new law had reached a normal state. In 2007, bankruptcy filings seemed to have recovered from the sharp increase that preceded implementation of the amendments and from the sharp drop that followed it. Month-over-month bankruptcies increased during 2007 for nine of the twelve months.²⁵ Although monthly filing rates continued to climb in 2008, the growth rate was far more modest than the rapid climb of 2006.²⁶ These trends led us to conclude that 2007 would yield a representative data pool of post-BAPCPA cases, minimally influenced by obvious transition effects.

Appendix I provides a detailed report of the methodology; we offer here only a brief overview. For the 2007 CBP, we selected 5000 randomly drawn cases to study from all judicial districts in the United States. We mailed an

²¹In order to arrive at nationally representative estimates, we weighted the data to adjust for the slight underrepresentation of respondents who filed under Chapter 13. For more details, see *infra* Appendix I, Part C.

²²See AACER, <http://AACER.com> (last visited Sept. 3, 2008).

²³We obtained a PACER fee waiver in every district except the Southern District of Texas, a consolidated district in which the district court, not the bankruptcy court, decides PACER fee waivers.

²⁴Administrative Office of the U.S. Courts: PACER Service Center, <http://pacer.psc.uscourts.gov> (last visited Sept. 3, 2008).

²⁵See Posting of Robert M. Lawless to Credit Slips, *Monthly Filings, Jan. 2006-Mar. 2008*, <http://www.creditslips.org/creditslips/2008/04/monthly-filings.html> (Apr. 17, 2008). The three exceptions were April, May, and December. Because the number of business days per month varies, we used the daily averages for each month.

²⁶See *id.*

eight-page questionnaire to the home of each debtor selected.²⁷ Half of the debtors responded, providing us with a total sample of approximately 2500 cases. For each respondent, we recorded extensive data from corresponding court records, which we matched on a debtor-by-debtor basis with the questionnaires. We also downloaded court records for a sample of nonrespondents to determine whether the nonrespondents were statistically distinguishable from those who responded. They were not.²⁸

The data presented here are based on the information reported in these bankruptcy court files. We recorded hundreds of separate pieces of data from each court record, but here we focus on key economic indicators. We compare the 2007 data with similar data collected from debtors filing in 1981,²⁹ 1991,³⁰ and 2001.³¹ The details of those studies are reported in detail elsewhere and summarized in Appendix I.³²

In addition to the earlier data reported here, we add information gleaned from telephone interviews with a subset of 1000 of the families filing in 2007 who completed a questionnaire. We compare the information from the 2007 telephone interviews with data from comparable 2001 interviews.³³

With close to a thousand pieces of information collected from written surveys and court records from each of 2500 families, and with answers from several hundred more questions posed by telephone to more than 1000 of these families, we have far more information about the families that filed bankruptcy in 2007 than we can possibly report in a single article. We anticipate a number of reports from the 2007 Consumer Bankruptcy Project over the next months and years. But we thought it fitting to begin the process of reporting our findings with the baseline information about the economic circumstances of bankrupt families that we, along with our colleague Professor Jay Lawrence Westbrook, have been collecting and reporting for many

²⁷The questionnaire is reproduced in Appendix II, *infra*.

²⁸We detected no economically meaningful or systematic response bias. Non-respondents were similar to respondents with regard to income, assets, debts, net worth, market value of homes, and prior bankruptcy history. For more details, see *infra* Appendix I, Part B(3).

²⁹TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, *AS WE FORGIVE OUR DEBTORS: BANKRUPTCY AND CONSUMER CREDIT AND BANKRUPTCY IN AMERICA* (Oxford University Press 1989) [hereinafter *AS WE FORGIVE*].

³⁰TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT* (Yale University Press 2000) [hereinafter *FRAGILE MIDDLE CLASS*].

³¹ELIZABETH WARREN & AMELIA WARREN TYAGI, *THE TWO-INCOME TRAP: WHY MIDDLE-CLASS MOTHERS AND FATHERS ARE GOING BROKE* (Basic 2003) [hereinafter *TWO-INCOME TRAP*].

³²Our prior studies were not random national samples but random samples drawn from five judicial districts. We have no reason to believe this affects the comparisons we make to these earlier cohorts of bankruptcy filers.

³³We have no reason to suspect a bias in the composition of this subset. Indeed, 86.7% of respondents indicated that they were willing to participate in a follow-up telephone interview. See *infra* Appendix I, Part B(4) (discussing statistical testing suggesting lack of response bias).

years.³⁴

III. FINDING I: THE SAME INCOMES

The debates over the bankruptcy amendments centered around the claim that debtors who could repay their debts were using bankruptcy to avoid doing so: “[U]nder current bankruptcy law, an individual can get full debt cancellation in chapter 7 with no questions asked.”³⁵ The solution to that problem, said the proponents, was to replace the substantial abuse test that called for ample judicial discretion to determine eligibility to file for Chapter 7 relief with a means test that called for a stringent and automated screen based predominately on a debtor’s income.³⁶ As its supporters explained:

This [BAPCPA] bill would make it harder for individuals who can repay their debt to file for bankruptcy under chapter 7³⁷

This bill does this by providing for a means-tested way of steering people who are filers, who can repay a portion of their debts, away from chapter 7 bankruptcy. This test employs a legal presumption that chapter 7 proceedings should be dismissed or converted into chapter 13 whenever the filers earn more than the State median income³⁸

Based on a complex formula, debtors with incomes above the median for their states are scrutinized more closely for bankruptcy eligibility and, depending on the formula, pressed into Chapter 13 or tossed out of bankruptcy altogether.³⁹ Proponents promised that such a test focusing on above-median

³⁴Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *Folklore and Facts: A Preliminary Report from The Consumer Bankruptcy Project*, 60 AM. BANKR. L.J. 293 (1986) [hereinafter *Folklore and Facts*] (1981 CBP data); Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *Consumer Debtors Ten Years Later: A Financial Comparison of Consumer Bankrupts 1981-91*, 68 AM. BANKR. L.J. 121 (1994) [hereinafter *Ten Years Later*] (1991 CBP data); Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *Less Stigma or More Financial Distress: An Empirical Analysis of the Extraordinary Increase in Bankruptcy Filings*, 59 STAN. L. REV. 213 (2006) [hereinafter *Less Stigma*] (2001 CBP data).

³⁵151 CONG. REC. S1856 (daily ed. Mar. 1, 2005) (statement of Sen. Grassley); accord Press Release, Senator Charles Grassley, Grassley Renews Effort to Reform Bankruptcy Code (Feb. 2, 2005), available at http://grassley.senate.gov/news/Article.cfm?customel/_dataPageID_1502=3544 (“The bankruptcy system currently allows anyone to get full debt cancellation in Chapter 7 with no questions asked, even if they have the means to pay off their debts.”); see also 151 CONG. REC. S1843 (daily ed. Mar. 1, 2005) (statement of Sen. Hatch) (“As matter of public policy we must say that those relatively high-income debtors, those capable of paying back their substantial debts, should at least pay something back.”); 151 CONG. REC. S1813 (daily ed. Mar. 1, 2005) (statement of Sen. Frist).

³⁶See 151 CONG. REC. S1856 (daily ed. Mar. 1, 2005) (statement of Sen. Grassley) (proposing amendments to 11 U.S.C. § 707(b) (2004)).

³⁷*Id.*

³⁸*Id.*

³⁹11 U.S.C. §§ 109(e), 707(b) (2006).

income debtors would give the best of both worlds: catch the abusers but have no effect on those who were in genuine financial distress.⁴⁰ This celebrated income-driven means test was the central feature of the 2005 amendments. Summarized one supporter: “[T]he heart of the bill is the means test.”⁴¹

There are two ways in which an income-based means test should affect the financial profile of bankruptcy filers. First, the means test, by barring most high-income debtors from Chapter 7, is designed to shunt some of them from Chapter 7 to Chapter 13. If effective, that test should differentiate bankrupt debtors by income, causing the Chapter 7 debtors to be relatively poorer and Chapter 13 debtors to be relatively richer after 2005.⁴² Second, because Chapter 13 itself also has eligibility requirements,⁴³ we should additionally expect some debtors to be bounced from the system altogether—pushed out of Chapter 7 and ineligible (or simply unwilling) to repay in Chapter 13. Again, if effective, this attribute of the means test would lead us to predict the *overall* income profile of bankruptcy filers—regardless of chapter—to become poorer after 2005.⁴⁴ We address these hypotheses in reverse order, considering first the overall income profile of all filers in 2007 versus earlier years and then the incomes of the subset of Chapter 7 and Chapter 13 filers in 2007 versus earlier years.

⁴⁰See, e.g., 151 CONG. REC. S1813-6, S1856-57 (daily ed. Mar. 1, 2005) (statements of Sens. Frist and Grassley).

⁴¹See 151 CONG. REC. S1779 (daily ed. Feb. 28, 2005) (statement of Sen. Specter).

⁴²We should articulate a necessary assumption: that there was not a trend of rising income among those who tend to file for bankruptcy. If such a hypothetical trend were true, then merely showing similar incomes between bankruptcy filers before and after BAPCPA would suggest that BAPCPA succeeded in driving out the *even higher-income* debtors that we would have expected to see in bankruptcy pursuant to this trend. In light of the flat incomes of the U.S. population generally, see *supra* note 1, and our prior research suggesting that bankruptcy filers generally have lower (and stably lower) incomes than the general population, see *Less Stigma*, *supra* note 34, at 222, we would find it difficult to construct a model predicting such a trend.

⁴³See 11 U.S.C. § 109(e) (2006).

⁴⁴We also recognize another assumption in this methodology: that the number of high-income abusers in the system was sufficient to have an effect on median income (and distribution). If Congress was trying to target only one or two bad apples, then presumably their exclusion by a successful means test would be difficult to detect in looking at the median incomes of a random national sample of the hundreds of thousands of bankruptcy filers. If, by contrast, Congress were going after a scourge of deadbeats, then we would expect to see some change in income patterns. We think that while some members of Congress tried to soothe that the means test wouldn't affect that many people, see notes 12 and 16 and accompanying text, they insisted at the same time that there was a “bankruptcy crisis” of debtors who could pay their debts. 151 CONG. REC. S1855-56 (daily ed. Mar. 1, 2005) (statement of Sen. Grassley). Accordingly, we take these advocates at their word that the nation was facing an epidemic “bankruptcy crisis” that had “contributed to the fraying of the moral fiber of the nation.” *Id.* at S1856. (We incidentally note that in our analysis of the distribution of incomes among the 2007 filers, see *infra* Figure 2, we find similar distributions of incomes among the subset of debtors with above-median incomes, even those with median household incomes above \$60,000, which suggests little change in income profile amongst the highest income echelons of filers.)

If the means test were responsible for the precipitous decline in bankruptcy filings after the law changed, then the median income of individuals filing for bankruptcy in 2007 should be lower than that of groups filing in earlier years. Yet in contrast to the promise of BAPCPA's proponents that only the high-income debtors would be pushed out of bankruptcy, the data tell a very different story. Instead of the predicted downward shift in income profiles, the incomes of debtors filing in 2007 were essentially indistinguishable from the incomes of those filing in 2001 and 1991.⁴⁵ For all three time periods, the median income fluctuated within a narrow band of only \$714.⁴⁶ (All dollar amounts used throughout this Article are adjusted for inflation and reported in constant 2007 dollars unless specifically noted.) As Figure 1 illustrates, incomes among families filing for bankruptcy were much higher in 1981, a time that might be characterized as the Golden Age of Low Bankruptcy Filings. They fell during the 1980s and have remained essentially flat ever since.⁴⁷

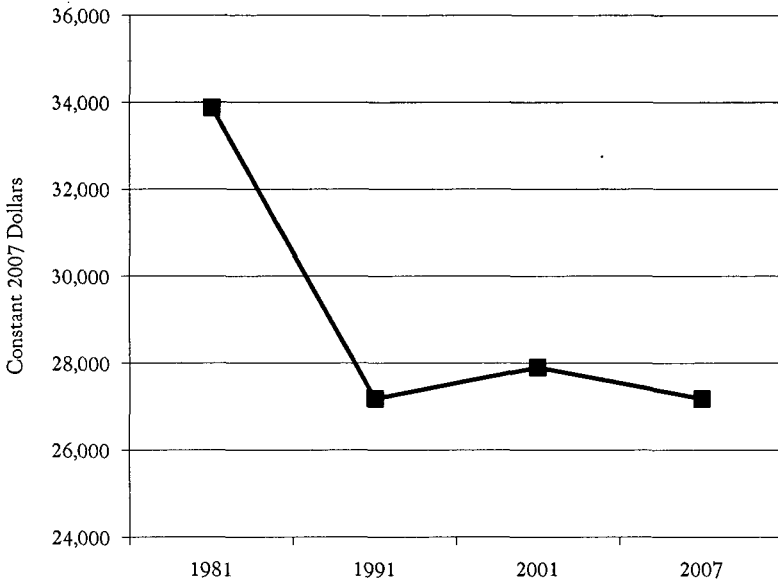
Of course, median income as a measure of central tendency is only the midway point between the highest and lowest figures. It is possible that the distribution of income changed in some important way that a median statistic overlooks. Indeed a Wilcoxon rank-sum test shows that the total distribution between 2001 and 2007 did, in fact, shift slightly.⁴⁸ We therefore disaggregated the debtors by income so that we could compare the distribution of debtors at different income levels. We isolated those debtors earning at the lowest income level (under \$10,000 annually) and compared their proportions in the 2001 and 2007 samples. We then repeated the exercise in \$10,000 increments, ending with incomes above \$100,000. The results, shown in Figure 2, demonstrate that across income levels, the 2001 and 2007 filers are quite similar. The 2007 filers had a somewhat greater percentage of persons with incomes from \$10,000-\$20,000 as compared with the 2001 filers and a somewhat lesser percentage of filers in the \$20,000-\$30,000 range. Because both of these income ranges are well below the lowest median income that would require a screen under the means test, we do not think the shift is of any real importance (at least as regards BAPCPA). Moreover, at the highest

⁴⁵The 1981-2007 difference is significant ($p < .0001$). The 1991-2007 difference is not significant ($p < .92$). The 2001-2007 difference is not significant ($p < .86$). For more details, see *infra* Appendix III.

⁴⁶The 1991 income figure differs significantly from neither the 2001 nor the 2007 income figures, and the 2001 income figure does not differ significantly from the 2007 figure. In effect, bankrupt debtors had the same income levels in 1991, 2001, and 2007. For 2007 compared with 2001, Wilcoxon $Z = 2.131$, $p = .0331$; t -test = .175, $p = .860$. For 2007 compared with 1991, Wilcoxon $Z = 1.387$, $p = .165$; t -test = .100, $p = .920$.

⁴⁷The 1981 income figure is significantly greater than the incomes of the debtors in 1991, 2001, and 2007 ($p < 0.0001$). For precise numbers, see Appendix III. See also *infra* note 52 (regarding debtor income data recently released by the Administrative Office of the U.S. Courts).

⁴⁸See *supra* note 46 (2007 compared with 2001).

FIGURE 1: MEDIAN HOUSEHOLD INCOME
OF BANKRUPTCY FILERS

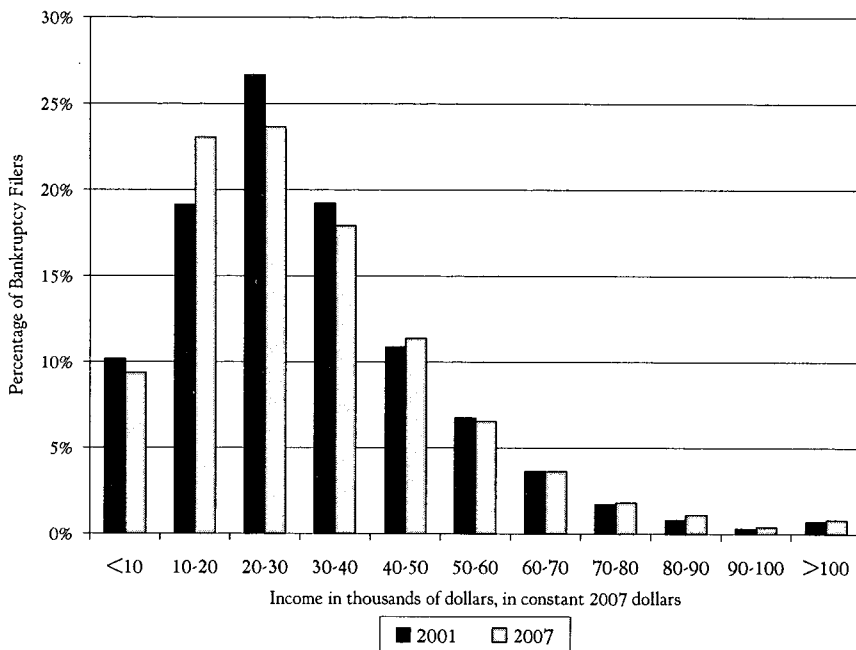
Source: Consumer Bankruptcy Project (see text)

income levels, where the proponents of BAPCPA predicted the law would have the greatest effect, the percentages of income distribution remain the same. Accordingly, we think the overall income distribution trends accord with the median income findings: no real change.

Figures 1 and 2 suggest that the enormous drop in bankruptcies following the 2005 amendments was not driven by the new income screen that is the central element of the means test. The presumptively abusive “rich” (at least as measured by income) debtors are not being squeezed out. Instead, the 2005 amendments have had the effect of squeezing *all* income groups alike—from the highest income to the lowest. The families deterred from filing seem largely indistinguishable from the families that filed bankruptcy before the amendments were adopted. In terms of pushing only the high-income, can-pay debtors from the bankruptcy system, the means test appears to have been a failure.

But what of the narrower goal of the means test to shunt high-income families into Chapter 13 by virtue of the restrictions on access to Chapter 7? Here again, the data at first blush might paint BAPCPA as a success in changing the Chapter 7/13 mix. Following the adoption of the amendments, the proportion (albeit not the absolute numbers) of Chapter 13 filings rose. In 2004, the last full year before the amendments, Chapter 13 cases were 29%

FIGURE 2: HOUSEHOLD INCOME IN \$10,000 INCREMENTS OF BANKRUPTCY FILERS, 2001 AND 2007



Source: Consumer Bankruptcy Project (see text)

of the non-business bankruptcies, and in 2007, Chapter 13 cases had risen to 41%.⁴⁹ Yet, just as before, it would be misleading to gauge BAPCPA's success solely by the decline in relative number of Chapter 7 bankruptcies. The shift in the ratio of Chapter 7 and Chapter 13 filers could be the result of a number of different factors. But there is a more accurate measure: if the increase in the proportion of Chapter 13 filers was caused by the income-driven means test, then the debtors shifted to Chapter 13 should be the higher-income "can-pay" targets who, before BAPCPA, were allegedly abusing the system by remaining in Chapter 7.⁵⁰

⁴⁹There were 465,878 Chapter 13 cases of 1,618,062 non-business cases filed in fiscal year 2004 compared with 276,649 Chapter 13 cases of 673,615 non-business cases filed in fiscal year 2007. See Press Release, Administrative Office of the U.S. Courts, Bankruptcy Filings Drop 61 Percent in March 2007 12-Month Period (June 27, 2007), available at http://www.uscourts.gov/Press_Releases/bankruptcyfilings062707.html. The fiscal year for these data ends March 31.

⁵⁰Whether Chapter 13 filers have the same income as their Chapter 7 counterparts is technically distinct from the dividend to unsecured creditors those Chapter 13 filers pay. One new study (drawn only from the Tenth Circuit) finds that Chapter 13 filers proposed to pay higher dividends to unsecured creditors in their plans in the year immediately following BAPCPA than in the year immediately before. See Bruce M. Price & Terry Dalton, *From Downhill to Slalom: An Empirical Analysis of the Effectiveness of BAPCPA (and Some Unintended Consequences)*, 26 YALE L. & POL'Y REV. 135, 193-94 (2007). It will

The Consumer Bankruptcy Project data permit us to explore whether the income screen in the means test pushed those high-income debtors who were more able to pay over to Chapter 13. Figure 3 suggests that this did not happen. Median income among Chapter 7 filers in 2001 was \$23,761, while median income among Chapter 7 filers in 2007 was a virtually identical \$23,136.⁵¹ Similarly, there is no statistically significant difference between the median incomes of Chapter 13 filers from 2001 and those from 2007, which were \$33,742 and \$35,688 respectively.⁵²

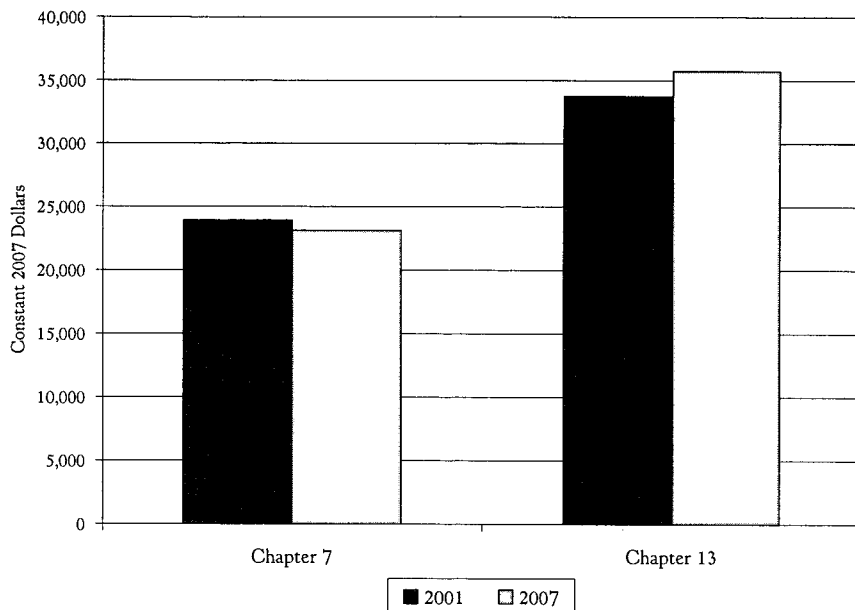
These data indicate that by yet another measure, BAPCPA seems to have failed its announced mission. The means test has pushed a higher proportion of bankruptcy debtors into Chapter 13, but it has not pushed a targeted group of presumptively abusive high-income earners. The large sorting effects based on income that the means test was supposed to produce simply did not occur. Instead, the principal effect of the new law was apparently random and arbitrary—the antithesis of what the supporters of the

be interesting to see whether these proposals translate into a change in actual dividends. If anything, what we know about *actual* dividends to unsecured creditors in Chapter 13 is discouraging: the median payment is \$0. See Scott F. Norberg, *The Chapter 13 Project: Little Paid to Unsecureds*, 26 AM. BANKR. INST. L.J. 1, 54–56 (2007); Scott F. Norberg & Andrew J. Velkey, *Debtor Discharge and Creditor Repayment in Chapter 13*, 39 CREIGHTON L. REV. 473 (2006).

⁵¹Wilcoxon $Z = 1.718$, $p = .086$.

⁵²Wilcoxon $Z = -.894$, $p = .371$. Our data on income in Chapter 7 and 13 are consistent with, but somewhat lower than, recently released data from the Administrative Office for U.S. Courts (“AO”). See ADMINISTRATIVE OFFICE OF THE U.S. COURTS, 2007 REPORT OF STATISTICS REQUIRED BY THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005, available at <http://www.uscourts.gov/bnkrptcstats/2007/BAPCPAstats.html> (last visited Sept. 3, 2008) (first annual report on bankruptcy statistics statutorily required by BAPCPA). The AO data are interesting but difficult to compare with the CBP data because of the AO’s reporting conventions, some of which were dictated by the statutory mandate. See generally 28 U.S.C. § 159 (2006). For example, because it was required to report on all cases filed in 2007, the AO report includes two related (and apparently abusive) mean-skewing Chapter 13 cases that listed almost \$2.4 billion in assets. *Id.* at 6 n.4. Removing these two outlier cases alone drops the mean value of total assets from \$175,234 to \$160,187. Without knowing the underlying distribution of the data in the AO report, it is impossible to make meaningful comparisons of means between the variables reported in it and the CBP study. Nevertheless, one variable for which the AO reports median statistics as does the CBP is debtor income. The AO finds median monthly income of \$2,150 and \$3,146 in Chapter 7 and 13 cases respectively. These data, however, exclude cases where the debtor reported debts “predominately of a business nature” and where “any information on the schedules was incomplete.” *Id.* at tbl. 1A n.1 (reporting general caveat on data collection procedures). Selecting similar cases from the CBP database produces roughly comparable median monthly income figures of \$1,926 and \$3,033 for Chapter 7 and 13 cases respectively. While these numbers appear statistically significantly lower than the AO numbers, the absolute dollar difference is not large. More importantly, this comparison is at best a guess regarding what algorithms the AO used to exclude “incomplete” data. For example, our hand-coding allowed us to record barely legible handwritten petitions from *pro se* debtors (who by hypothesis might have lower incomes), but the AO’s dataset may exclude these figures. We cannot know. Thus the mild apparent divergence between the AO data and CBP data remain untroubling given the necessary imperfection of coding “incomplete” bankruptcy records. More importantly, we note that our approach biased our results against our conclusions; if we were to use the AO data of slightly higher debtor incomes, our convictions of BAPCPA’s inefficacy would only strengthen.

FIGURE 3: MEDIAN HOUSEHOLD INCOME
BY BANKRUPTCY CHAPTER



Source: Consumer Bankruptcy Project (see text)

amendments promised.⁵³

The main message from these first Consumer Bankruptcy Project data is

⁵³While most members of Congress charged ahead, some academics worried that BAPCPA would have just this perverse outcome. In a joint letter to Congress (signed by some of us), about one hundred law professors explained:

Our problem is not with means-testing per se. Our problem is with the collateral costs that this particular means-test would impose. This is not a typical means test, which acts as a gatekeeper to the system. It would instead burden the system with needless hearings . . . and arbitrarily deprive families of needed relief.

Letter from Bankruptcy and Commercial Law Professors to Senators Specter and Leahy (Feb. 16, 2005), available at <http://www.abiworld.org/pdfs/LawProfsLetter.pdf>. Special prescience in this regard goes to Professor Jean Braucher, who wrote in a 2002 symposium right in the midst of the debates:

The current debate is not really about whether to means-test bankruptcy, but about whether it is possible to do a better job of catching the system's abusers without excluding many "honest but unfortunate" debtors in the process. . . . With only modest gains possible in catching abusers and increasing collections in bankruptcy, it is particularly appropriate to ask whether any given proposal for reform will do more harm than good, imposing new costs for minimal returns. We should be asking: would the proposed changes make for a better system than we currently have?

The pending consumer bankruptcy legislation fails this test. It would make access to bankruptcy more difficult for all, imposing new costs and hurdles and thus pricing the worst off out of the system.

that despite BAPCPA, incomes of those filing for bankruptcy have not changed in any meaningful way. Part of the reason for this lack of change may simply be that incomes did not have far to fall. As reported in Appendix III, median household income for bankrupt debtors in 2007 was about \$27,100—statistically indistinguishable from the \$27,800 in 2001 and \$27,100 back in 1991.⁵⁴ Median household income across the United States in 2006 (the most recent year available) was \$48,200.⁵⁵ These figures put the income of the median bankrupt household in 2007 a full 45% below the income of the median household in the general U.S. population. In 2001, the story was the same. The median income for those filing for bankruptcy was 44% below the then-median income for all households.⁵⁶ The families that file for bankruptcy have traditionally had—and continue to have—quite modest incomes.

Whatever the underlying reasons, these data suggest that the biggest apparent effect of the 2005 amendments—the plunge in the number of bankruptcies—was not driven by the most heralded aspect of the amendments, the income-driven means test. Similarly, the data also suggest that the shift in the proportions of Chapter 13 and Chapter 7 filings was not attributable to the BAPCPA income screen. Our data seem inconsistent with the conclusion that the means test worked as its proponents promised it would. If anything, when measured by the criteria announced by its supporters, the data suggest the opposite: BAPCPA's much-touted means test was a failure.

IV. FINDING II: DEBTORS IN A DEEPER HOLE

The debates over the 2005 amendments focused very much on income and very little on assets; those who claimed that the bankruptcy system was rife with abuse showed scant interest in reducing the amount of property a bankrupt debtor could keep.⁵⁷ In fact, the only real interest in assets came from opponents of BAPCPA,⁵⁸ who argued to impose a cap on homestead protections to rein in millionaires from exempting mansions in Florida, Texas, and a handful of other states.⁵⁹ (They essentially lost, gaining only modest con-

Jean Braucher, *Means Testing Consumer Bankruptcy: The Problem of Means*, 7 FORDHAM J. CORP. & FIN. L. 407, 408–09 (2002).

⁵⁴See *supra* note 45.

⁵⁵U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS: CONSUMER INCOME, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2006, P60-233, at tbl.1, available at <http://www.census.gov/prod/2007pubs/p60-233.pdf>. With inflation adjustment, that would have been \$49,573 in 2007.

⁵⁶See *Less Stigma*, *supra* note 34, at 222.

⁵⁷Philip Shenon, *Home Exemptions Snag Bankruptcy Bill*, N.Y. TIMES, Apr. 6, 2001, at A1.

⁵⁸See, e.g., 148 CONG. REC. S5087 (2002) (statement of Sen. Kohl) (announcing proposal to cap homestead equity at \$175,000).

⁵⁹The other states that place no limit on the value of the exempt homestead are Iowa, Kansas, Oklahoma, and South Dakota, as well as the District of Columbia. COLLIER ON BANKRUPTCY (15th ed.,

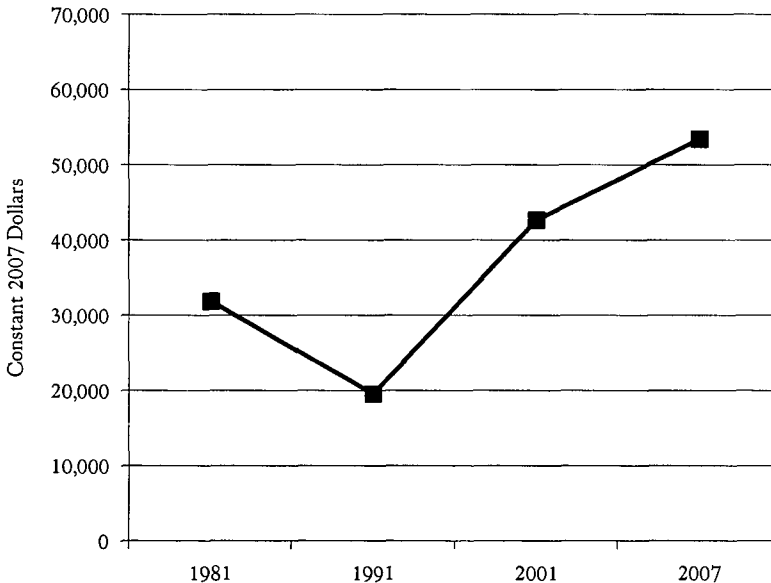
straints on mega-homestead protection.⁶⁰)

Other than the sidebar debate over mansions, assets and asset exemptions received virtually no attention in the bankruptcy debates. Similarly, the net worth (assets minus liabilities) of families in bankruptcy or ability to pay as measured by debt-to-income ratios received minimal interest. No advocates of change argued that high net worth or low debt-to-income ratios demonstrated abuse, and no amendments to the bankruptcy laws focused on these issues. It was all about income. In spite of this lack of legislative interest, however, a complete analysis of the financial circumstances of bankrupt debtors pre- and post-BAPCPA requires a review of other indicia of financial condition. Ironically, here is where important differences emerge.

A. TOTAL ASSETS

After the 2005 amendments, families file for bankruptcy owning substantially more property than pre-amendment debtors owned. Median total assets reported by bankrupt debtors jumped 25% from 2001 to 2007.

FIGURE 4: MEDIAN TOTAL ASSETS OF BANKRUPTCY FILERS



Source: Consumer Bankruptcy Project (see text)

As Figure 4 suggests, the 2007 increase is unlikely to be the byproduct of

rev. vol.); see also David A. Samole & David L. Rosendorf, *Homestead Exemption No Longer "Debtors' Paradise"*, 24-10 AM. BANKR. INST. L.J. 6 (Dec. 2005-Jan. 2006).

⁶⁰See, e.g., 11 U.S.C. § 522(p) (2006) (restricting under certain circumstances homestead exemptions to \$125,000 in equity).

a change in the laws in 2005. Instead, a secular trend that began well before BAPCPA seems present. The increase in assets in 2007 follows a longer-term development that started in 1991. Median assets climbed from about \$19,300 in 1991, to \$42,600 in 2001, to \$53,100 in 2007.⁶¹

B. TOTAL DEBTS

Review of the asset data alone, however, is incomplete without also considering debts. As Figure 5 indicates, for households in bankruptcy, assets and debts follow similar trend lines. As total assets rise, so do total debts, increasing from about \$47,400 in 1981 to \$87,300 in 2007.⁶² Today's families seeking bankruptcy relief owe more than twice as much as they did in earlier generations.

C. SECURED DEBT: ENCUMBERING THE ASSETS

For a household in bankruptcy—like most middle class households—the family home is its largest asset. Not surprisingly, the data reported about both assets and debts are heavily influenced by homes and home mortgages. The data suggest that rising home values played an important role in rising asset values.⁶³ The median home listed in a bankruptcy petition in 2001 was valued at \$103,700, while the median home in 2007 was \$110,400.⁶⁴ While this difference is not statistically significant, the variation widens with the comparison of mean home prices. From 2001 to 2007, mean home value jumped from \$118,800 to \$143,400, a statistically significant increase that is pushed by a larger number of higher-priced homes in 2007.⁶⁵

Of course, homeownership carries its own price: the mortgage. From 2001 to 2007, median mortgage debt for bankruptcy filers increased from \$91,600 to \$102,000.⁶⁶ The median mortgage grew by 11.4%, almost double the 6.5% increase on the median home value. While home values increased, the data suggest that the mortgages to buy those homes increased even more.

⁶¹For 2007 compared with 2001, Wilcoxon $Z = -2.293$, $p = .0218$. For 2007 compared with 1991, Wilcoxon $Z = -8.437$, $p < .0001$. From 2007 to 2001, mean asset value increased from \$80,787 to \$100,878 (t -test = 4.63, $p < .0001$).

⁶²For 2007 compared with 2001, Wilcoxon $Z = -2.293$, $p = .0218$. For 2007 compared with 1991, Wilcoxon $Z = -11.844$, $p < .0001$. For 2007 compared with 1981, Wilcoxon $Z = -14.892$, $p < .0001$.

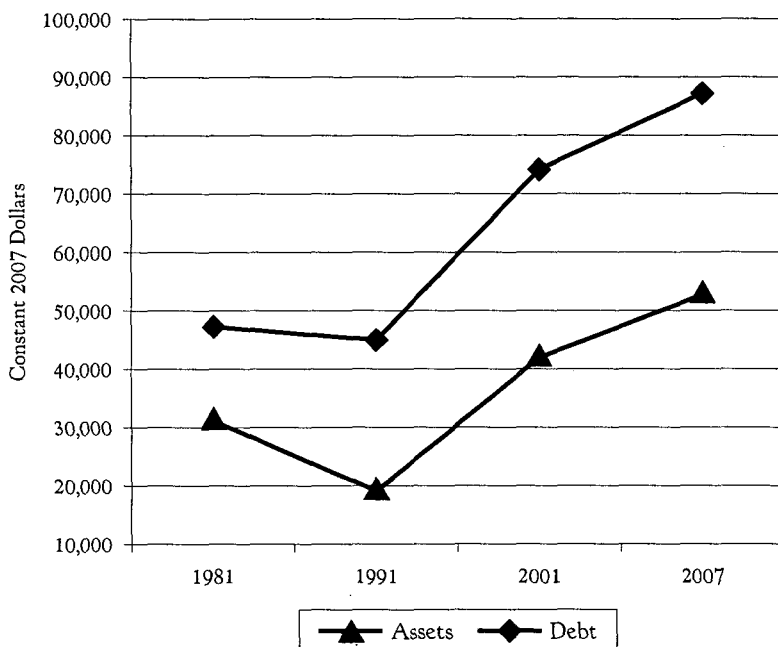
⁶³Since 1981, the proportion of families filing for bankruptcy who own their own homes has remained fairly constant at about half of all debtors. About 51.6% of the filers in 2007 lived in their own homes, a difference that is not statistically significant from the 54.1% who did in 2001 ($p = .165$). In 1991, about half of all the non-Philadelphia debtors were homeowners, although only about 43.9% of the total sample were homeowners. FRAGILE MIDDLE CLASS, *supra* note 30, at 202. (The authors believe that the higher proportion of legal service clients in Philadelphia drove down the average homeownership rates in that district unrepresentatively. See *Ten Years Later*, *supra* note 35, at 132.) In 1981, 52% of the debtors were homeowners. As WE FORGIVE, *supra* note 29, at 129.

⁶⁴Wilcoxon $Z = -1.314$, $p = .189$.

⁶⁵ t -test = 4.62, $p < .0001$.

⁶⁶Wilcoxon $Z = -2.230$, $p = .026$.

FIGURE 5: MEDIAN TOTAL ASSETS AND TOTAL DEBTS OF BANKRUPTCY FILERS



Source: Consumer Bankruptcy Project (see text)

Increases in the value of homes and the size of mortgages were not bankruptcy-specific phenomena. Homeowners across the country experienced run-ups in the values of their homes and in the mortgages to pay for those homes. In the same 2001-2007 period, average home prices around the country rose 27% from \$171,700 to \$217,900.⁶⁷ Average mortgage obligations rose 22% from \$82,600 in 2001 to \$100,900 in 2005 (the latest year for which we have available data, although we continue to report all figures in 2007 dollars).⁶⁸ Thus, it is noteworthy that while home values and mortgages rise effectively

⁶⁷See National Association of Realtors®, Median Sales Price of Existing Single-Family Homes for Metropolitan Areas, available at <http://www.realtor.org/Research.nsf/files/msapricesf.pdf> (last visited Sept. 3, 2008) (2007 data); Real Estate ABC, USA Real Estate Median Sales Price of Existing Homes since 1968, available at <http://www.realestateabc.com/graphs/natlmedian.htm> (last visited Sept. 3, 2008) (archiving National Association of Realtors historical data on median home values) (2001 data).

⁶⁸See U.S. CENSUS BUREAU, AMERICAN HOUSING SURVEY, available at <http://www.census.gov/hhes/www/housing/ahs/ahs05/tab3-15.pdf> (last visited Sept. 3, 2008). Although per-household data are not yet available on 2007 mortgage loads, aggregate data are available. The Federal Reserve Board reports that total aggregate household mortgages outstanding were \$10.533 trillion in 2007. See Federal Reserve Statistical Release, Flow of Funds Accounts of the United States, Table Z.1, available at <http://www.federalreserve.gov/releases/z1> (last visited Sept. 3, 2008). With interest rates on adjustable-rate mortgages only increasing since 2007, and the housing crash unfolding, we have strong reason to suspect that both housing debt and property values will worsen for consumers.

in tandem for the population as a whole, mortgages are galloping upward at twice the rate of home values for those who end up in bankruptcy.

In addition to homes, families in bankruptcy—like families everywhere—have other assets and secured debts too. In fact, about half of the bankrupt families are not homeowners. For them, these other secured debts, such as car loans, are their main secured obligations. Homeowners often owe secured loans for cars, appliances and other purchases as well.

As Figure 6 shows, just like mortgage debt, other secured debt has been rising for bankruptcy filers. From 2001 to 2007, median non-mortgage secured debt jumped from \$36,000 to \$46,000—an increase of nearly 28%.⁶⁹ This rise is all the more notable due to the relatively small increase in—and modest absolute value of—non-home assets, which rose only 18% (from \$11,200 to \$13,200).⁷⁰ In other words, apart from their homes, these debtors own very little; the \$13,200 median package of non-home assets includes the value of all cars, furniture, clothes, tools, books, pets, savings, retirement accounts, lawnmowers, wedding rings, cash on hand, and other valuables. That the average load of non-mortgage secured debts climbed 28% from \$36,000 to \$46,000 in the face of these modest non-home assets tells another story (in fact, an even starker one) of debtors encumbering their assets faster than those assets' values have risen.⁷¹

D. UNSECURED DEBT: ENCUMBERING THE DEBTOR

The debtors who filed for bankruptcy in 2007 also looked worse than their 2001 counterparts in another respect: they had much more credit card, medical, utility, and other unsecured debt—debt that is either due immediately (utility) or very expensive when financed long-term (credit card).⁷²

Once again, those in bankruptcy followed a predictable trend line. Each successive study of the Consumer Bankruptcy Project suggests that the un-

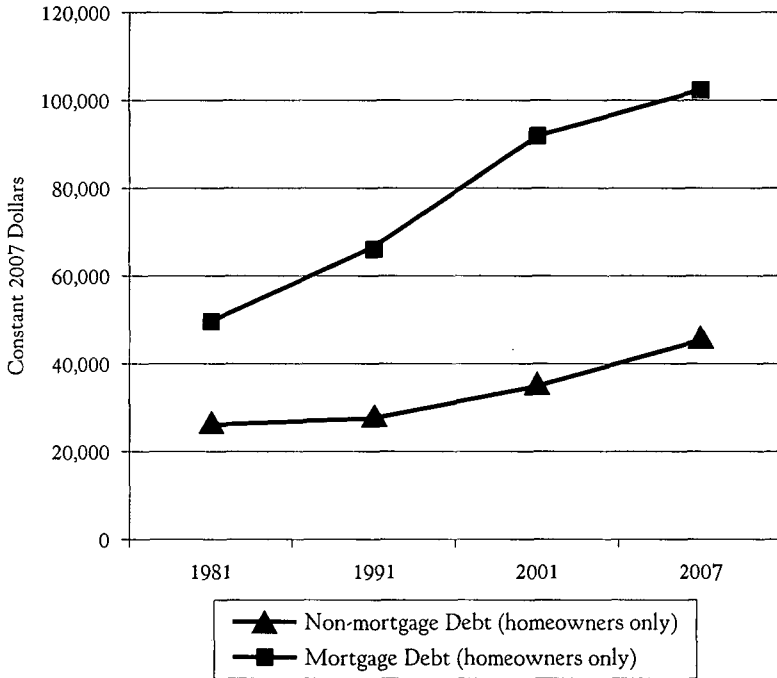
⁶⁹Wilcoxon $Z = -7.9629$, $p < .0001$.

⁷⁰Mean (median) non-home assets in 2001 were \$24,229 (\$11,123) and in 2007 were \$27,488 (\$13,227). The difference in means was almost statistically significant ($t = 1.73$, $p = 0.084$), while a Wilcoxon rank-sum test showed a statistically significant difference between the distributions ($z = 2.21$, $p = 0.027$).

⁷¹There is not a perfect correspondence between non-mortgage debt and non-home assets. Tax liens, for example, are non-mortgage debt that can encumber both home and non-home assets. Accordingly, our data cannot be read to assume that the median debtor has encumbered his non-home assets by 300%.

⁷²See Sumit Agarwal, John C. Driscoll, Xavier Gabaix & David Laibson, *Learning in the Credit Card Market* (N'1 Bureau of Econ. Research, Working Paper No. W13822, Feb. 2008), available at <http://www.nber.org/papers/w13822.pdf> (last visited Sept. 3, 2008), at Appendix A, which reports a panel dataset that contains three years of credit card statements, representing 120,000 consumers and 4,000,000 credit card statements. The issuer of the analyzed credit cards in 2002-04 was charging average annual late/overlimit/cash advance fees of \$141 per account and \$226 in penalty interest. These charges were on accounts that showed a mean monthly balance of \$1735 (with a standard deviation of \$1978). This surcharge was roughly 21% above the base APR. For a set of 120,000 cardholders, the issuer would net \$44 million per year from these fees and penalty interest charges.

FIGURE 6: MEDIAN SECURED DEBTS OF BANKRUPTCY FILERS

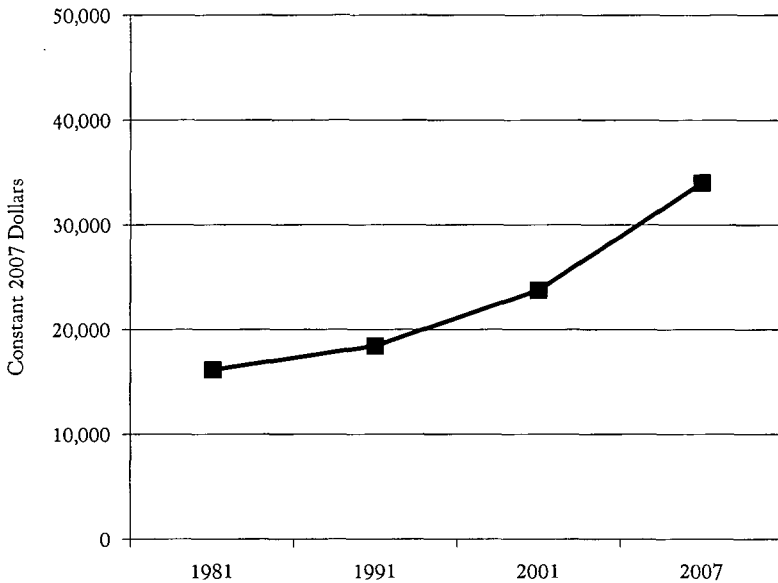


Source: Consumer Bankruptcy Project (see text)

secured debt loads of bankrupt households are increasing. Moreover, this trend is more pronounced than the one in the secured debt distribution. During the six-year period from 2001 to 2007, the growth rate in unsecured debt listed by families in bankruptcy (shown in Figure 7) was more than double the growth rate in reported secured debt.⁷³

The cumulative effects of the growth in debt have been staggering. In the six years from 2001 to 2007, families that filed for bankruptcy were collectively carrying 20.8% more secured debt and 43.6% more unsecured debt—all on incomes that remained static. Additionally, this deterioration in family circumstances appears to have been accelerating. While our data points are widely spaced, they suggest unsecured debt loads for bankrupt families grew from 1981 to 1991 at an average annual rate of about 1.4% (not compounded). From 1991 to 2001, the increase doubled to about 3% per year, and from 2001 to 2007, the rate of growth in the debt loads more than

⁷³Total secured debt grew at a 3.5% average annual, non-compounded rate. In the same time period, unsecured debt listed in bankruptcy, which had grown at about 3% per year from 1991 to 2001, increased by about 7.3% annually from 2001 to 2007. By contrast, income stagnated at about \$27,000 from 1991 forward. See *supra* note 45 and accompanying text; *infra* Appendix III.

FIGURE 7: MEDIAN UNSECURED DEBT
OF BANKRUPTCY FILERS

Source: Consumer Bankruptcy Project (see text)

doubled again, to 7.3%. As Figure 8 reveals, the depth of the troubles facing bankrupt families has been accelerating for more than two decades.

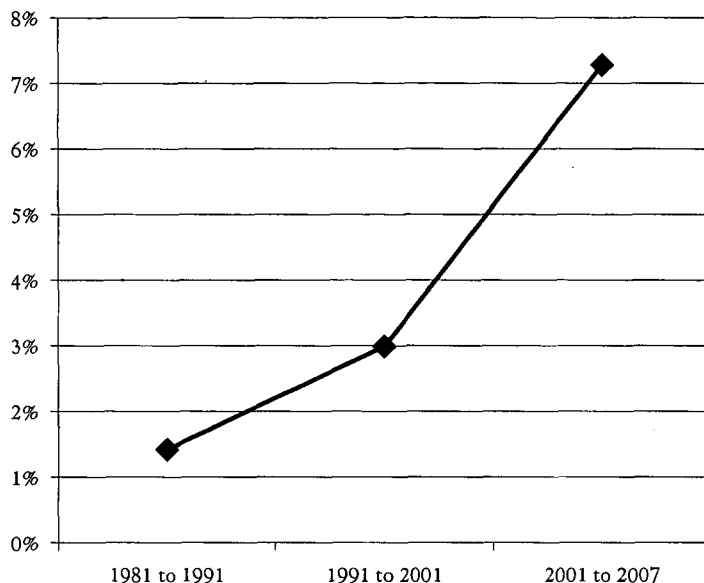
The data on unsecured debt reinforce the conclusions about net worth and secured debt: the households filing for bankruptcy after BAPCPA are in markedly more financial trouble than their earlier counterparts, but the differences are continuations of trends that were discernible long before the amendments were adopted.

E. ADDING IT UP—BALANCE SHEETS AND INCOME STATEMENTS

The balance sheet—assets minus debts—is a static snapshot that summarizes the outcome of a financial life to that point in time. For families in bankruptcy, both assets and debts are rising. But they are not rising at the same rates; debts are outpacing assets as families' balance sheets have worsened across the time periods studied. As Figure 9 indicates, in 1981, the negative net worth of a median household in bankruptcy was \$11,200. By 2007, the median filer had a negative net worth of nearly \$24,400. From 1981 to 2007, the hole in which the debtors stood, as measured by net worth, was more than twice as deep.⁷⁴

⁷⁴The exact medians, calculated on a debtor-by-debtor basis, using constant 2007 dollars, are reported in Appendix IV, *infra*, along with Wilcoxon Z and p values that show the differences between all years

FIGURE 8: AVERAGE ANNUAL PERCENT CHANGE IN MEDIAN UNSECURED DEBT OF BANKRUPTCY FILERS



Source: Consumer Bankruptcy Project (see text)

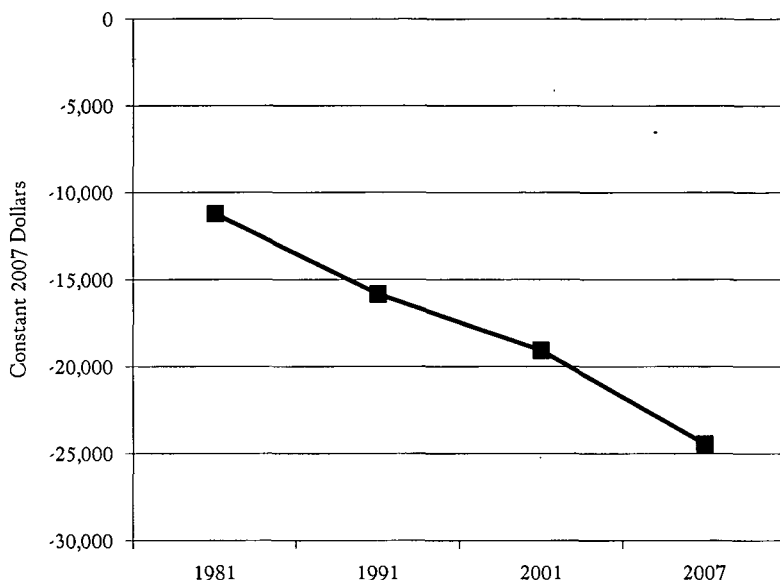
The 2007 families were managing substantially larger debt loads than were their earlier counterparts, but they had no more property to show for their bigger debt burdens. In fact, they had proportionately less when measured by net worth.

Because the balance sheet tells only about accumulated assets and debts, however, it misses the more dynamic picture of the match between income and expenses. For families in bankruptcy, it is possible to explore one aspect of that relationship by comparing income with debt. With the flat incomes and rising debt loads already reported, these findings are unsurprising. In addition to studying the overall numbers on debts and incomes, however, our unique dataset permits us to construct a debtor-by-debtor analysis, so that the debts and income of each debtor can be compared. This makes it possible to get a better sense of the immediate pressure facing the families who turn to bankruptcy.⁷⁵

are statistically significant. Another study found similarly significant increases in the value of debtors' real and personal property, as well as secured and total debt in Chapter 13. (They did not provide figures for Chapter 7 debtors or debt-to-asset ratios.) The authors caution, however, that the spike in filings immediately before BAPCPA took effect may have influenced their results. See Price & Dalton, *supra* note 50, at 191-92.

⁷⁵Debt-to-income ratios are just one measure of financial distress. There are others. Consider the Debt Service Ratio (DSR) and the Financial Obligations Ratio (FOR), two measures of after-tax income availa-

FIGURE 9: MEDIAN NET WORTH (TOTAL ASSETS LESS TOTAL DEBTS) OF BANKRUPTCY FILERS



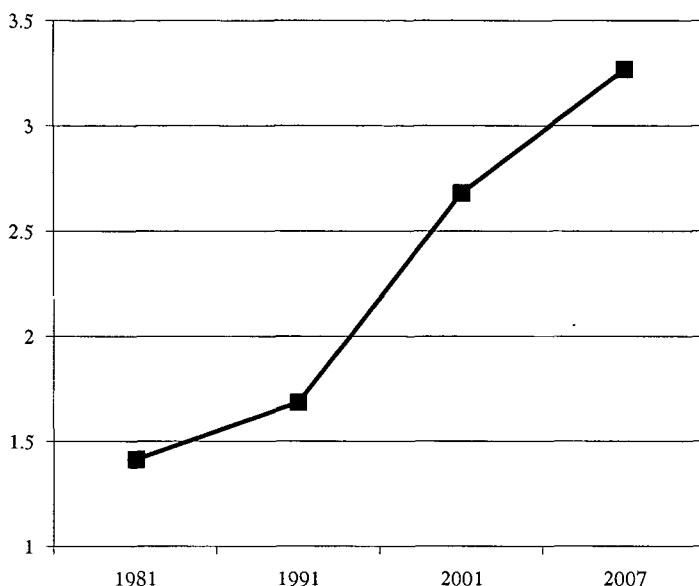
Source: Consumer Bankruptcy Project (see text)

The debtor-by-debtor results confirm what the aggregate income and debt data already suggest. Since the first collection of data in 1981, household debt-to-income ratios have been rising. Each successive Consumer Bankruptcy Project study has demonstrated that the families filing for bankruptcy are carrying larger debt-to-income loads than their predecessors.

The differences shown in Figure 10 are not small. In 1981, the median bankrupt debtor owed about one year and five months of income (which is *gross* income, with no allowances for outlays such as income taxes or even food), for a total debt-to-income ratio of 1.4. By 2007, the median bankrupt debtor owed about three years and four months of income, for a debt-to-income ratio of 3.3.⁷⁶ In other words, families filing today do not come into

ble to pay minimum debts (DSR) and minimum debts plus residential leases and other regular payments (FOR). These ratios, compiled by the Federal Reserve Board, show upward trends since 1980, from about 16 to 18% and 10 to 14% respectively. See BOARD OF GOVERNORS OF THE FED. RESERVE SYS., REPORT TO THE CONGRESS ON PRACTICES OF THE CONSUMER CREDIT INDUSTRY IN SOLICITING AND EXTENDING CREDIT AND THEIR EFFECTS ON CONSUMER DEBT AND INSOLVENCY 12-13 & fig.3 (2006). "One problem with these data, however, is that minimum payments for credit cards may result in negative amortization. Another is that they are aggregate data and hence do not show heterogeneity; case study data suggest bankrupt debtors bear a disproportionately heavy debt service burden." John A. E. Pottow, *Private Liability for Reckless Lending*, 2007 U. ILL. L. REV. 407, 408-09 n.16.

⁷⁶The median total debt-to-income ratio for 1981 was 1.411. For 2007, the median total debt-to-

FIGURE 10: TOTAL DEBT-TO-INCOME RATIO
OF BANKRUPTCY FILERS

Source: Consumer Bankruptcy Project (see text)

bankruptcy until, relative to their incomes, they are in about twice as much financial trouble as families were a generation ago.

The debt-to-income ratios illustrated in Figure 10 are calculated using *total* debt. Of course, mortgage debt is not due immediately. While the family must make its mortgage payments in order to avoid losing its home, the entire debt can be spread over many years. Car loans can also be managed in monthly payments. Thus, the ratio of *unsecured* debt to income may give a more accurate sense of the immediate crisis facing these families. Unlike mortgage payments and car loans, the unsecured debt burden carries the risks of sharply increasing interest rates and multiple fees that can wreak havoc on household budgets. For example, once credit card debt is past due, it carries interest rates and penalty fees that can double the amount outstanding in a relatively short time.⁷⁷

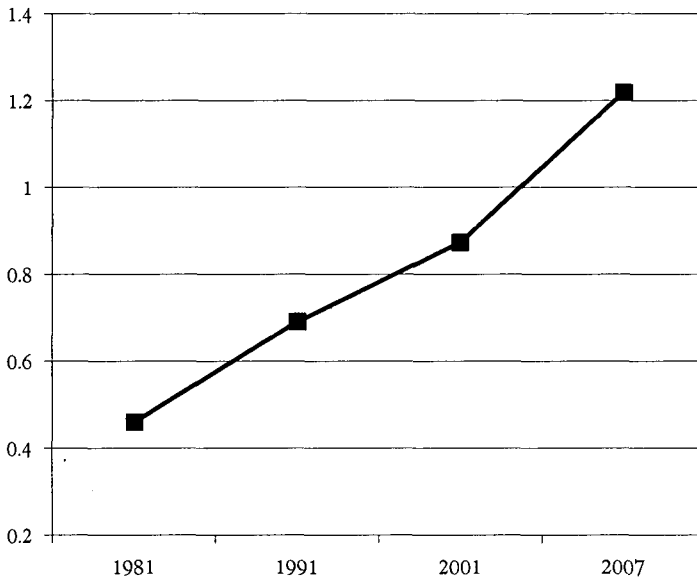
Compared with the total debt-to-income ratios, the unsecured debt-to-income ratios have grown even faster, as shown in Figure 11. In 1981, the median household in bankruptcy owed just under six months of income in credit cards, medical debts, and other unsecured credit, for an unsecured

income ratio was 3.272. For 2007 compared with 1981, the difference is statistically significant (Wilcoxon $Z = -22.531$, $p < .0001$).

⁷⁷See generally Mann, *Sweat Box*, *supra* note 19, at 389-92.

debt-to-income ratio of 0.46. By 2007, the median household owed nearly 15 months of income to unsecured creditors, for an unsecured debt-to-income ratio of 1.22. This means that by 2007, the ratio of unsecured debt to income was two and a half times larger than the ratio in 1981.⁷⁸ When the 1981 data were first revealed, the authors characterized the debt-to-income ratios as “staggering,” a comment that now seems almost quaint.⁷⁹

FIGURE 11: UNSECURED DEBT-TO-INCOME RATIO
OF BANKRUPTCY FILERS



Source: Consumer Bankruptcy Project (see text)

In sum, when looking at measures beyond just income, the families filing for bankruptcy today are in worse shape than those filing in earlier years. Family by family, median net worth continues to sink, and bankrupt households are struggling with ever-larger mortgages and total debt loads.

Might these final data regarding debt (especially unsecured debt) at last be some positive news, albeit grim, for the supporters of BAPCPA? The data suggest that although they appear similar in terms of their income levels, the bankruptcy filers still around after BAPCPA are in measurably worse balance sheet and debt service circumstances than their counterparts from 1981, 1991, and 2001. Could we thus infer that those no longer relying on the system, while having similar incomes, at least have greater capacity to manage

⁷⁸The difference is statistically significant (Wilcoxon $Z = -24.279$, $p < .0001$).

⁷⁹*Folklore and Facts*, *supra* note 34, at 320.

their unsecured debts—that they are indeed the better-off, can-pay debtors targeted by those who lobbied for BAPCPA?

There are at least two reasons to doubt this conclusion. First, this interpretation of the data runs contrary to the legislative design of BAPCPA itself. In crafting the means test, Congress made no effort to target relatively higher net worth individuals even if they had lower incomes.⁸⁰ In fact, as mentioned earlier, suggestions to cap property exemptions were firmly rejected.⁸¹ As for a nuanced consideration of debt-to-income ratios, suffice it to say such complex metrics had no place in the sponsors' press packages. This does not eliminate the possibility that the law had such an effect, but it shows that any such outcome would have to have been indirect and, at least as a matter of the public debates, unexpected. At best it would be a positive legislative blunder: BAPCPA succeeding in spite of itself, not because of itself.⁸²

⁸⁰See 11 U.S.C. §§ 707(b)(6), 707(b)(7) (2006).

⁸¹See *supra* notes 57-60 and accompanying text.

⁸²The only way to stretch BAPCPA to indicate some interest in net worth is to re-envision the credit counseling requirement as a way to screen "can-pay" debtors in an undifferentiated, unspecified way wholly distinct from the means test's income screen. Thus it could be, at least theoretically, that while the means test failed, credit counseling "worked" by inducing the stronger debtors (in terms of net worth and debt-to-income ratios) to soldier on and stay out of bankruptcy. While possible, this theory strikes us as deeply implausible. Credit counseling has been offered by independent providers who are unlikely to coordinate an effort to herd families in the same direction. Indeed, credit counselors that work through lawyers, as do many of the largest services, have a positive incentive to move debtors directly into bankruptcy quickly and cheaply. If they failed to do so, their supply of debtors from referring lawyers would presumably diminish. See National Association of Consumer Bankruptcy Attorneys website, which provides links/advertisements for two major credit counseling firms on its "Tools of the Trade" webpage: <http://www.nacba.org/tools.php> (last visited Sept. 3, 2008). Moreover, credit counseling is perceived, and may well be, a largely pro forma technicality with little substantive effect. See Debt Relief Lowdown, *Is Credit Counseling a Waste of Time?*, Mar. 1, 2006 (describing National Association of Consumer Bankruptcy Attorneys study finding only 3% of 61,000 surveyed debtors had enough financial cushion that pre-bankruptcy counseling would have helped avoid bankruptcy), available at http://www.debtreliefowdown.com/credit_counseling/index.html. We also note that the credit counseling services often provide the mandatory debtor education courses within bankruptcy, see Brett Weiss, *Why I Hate Pre-Bankruptcy Credit Counseling*, BANKRUPTCY LAW NETWORK, Apr. 6, 2007, available at <http://www.bankruptcylawnetwork.com/2007/04/06/why-i-hate-pre-bankruptcy-credit-counseling>, which could create yet another incentive to move debtors quickly to a bankruptcy filing so that the customer can return for the mandatory course.

Similarly, it is difficult to characterize specific amendments that apply across the board to all debtors (not just high-income ones) as designed to screen can-pay debtors from can't-pay ones. See, e.g., 11 U.S.C. § 1325 (2006) (anti-cramdown expansion for Chapter 13 plans); 11 U.S.C. § 506(a)(2) (2006) (valuation rules for debtor collateral); 11 U.S.C. § 523 (2006) (expansion of non-dischargeability provisions). We see these provisions as designed to help specific constituencies of lobby-favored creditors. That they have an indirect effect on the debtor is necessarily true; that they were designed to ferret out "can-pay" debtors in the same way that the means test was expressly designed to do is not.

Finally, we are unable to explain Congress's motivation in passing random punitive provisions designed for all debtors, such as the expansion of discharge intervals. See, e.g., 11 U.S.C. §§ 727(a)(8)-(9), 1328(f) (2006). Needless to say, we do not recall any arguments in the debates that the marginal debtor who "can pay" her debts is one who is attracted by the prospect of returning to bankruptcy in seven years but who will hunker down and pay her creditors if she faces an eight-year bar.

Second, and perhaps of more significance economically, debt loads were getting worse for everyone during this period.⁸³ If the general population's debt loads had stayed relatively constant, then we might infer from the worsening debt loads of those filing for bankruptcy after BAPCPA that the amendments worked in keeping "regular" debt-load consumers ("can-pays") from filing for bankruptcy with the result being that only "worsened" debt-load consumers ("can't-pays") remained in the system. But family debt loads across America did not stay constant. The general population faced the relentless climb of consumer credit that had been going on for decades; families in 2007 had even more consumer debt on an aggregate level than ever before. Given this run-up in debt among the general population, it is plausible that the worsened debt loads of those filing for bankruptcy in our 2007 sample show the consequences of a population-wide trend of increasing debt loads and decreasing debt-service capacity.⁸⁴ Accordingly, we are loath to predict that the comparatively worsened financial straits of bankruptcy filers in 2007 compared with 2001 suggest a back-door success of BAPCPA. If anything, they confirm an ominous trend of American families fighting a losing struggle with debt.

F. THE MISSING 800,000

Before discussing our findings in more depth and considering possibly explanatory theories, we want to comment on what our income and our debt-load findings imply for the missing 800,000 families driven from the bankruptcy system after BAPCPA. Our data suggest that the families filing for bankruptcy in 2007 had equivalent incomes to those filing in 2001 and 1991 but that they carried larger debts. But what, if anything, can we say about the families who did not enter the bankruptcy system—the 800,000 families who we would have expected to file but for BAPCPA? To be sure, we have no device to detect and study these would-have-filed families directly, but we can draw at least some inferences from the data and trend lines.

As reported earlier, although the number of petitioners filing for bankruptcy relief in 2007 was half the number immediately preceding BAPCPA, those who filed in 2007 looked no different in income profile from those who

⁸³Median incomes in the general population have declined slightly from 2005 to 2007. Total outstanding debt has increased, and both revolving and consumer debt have been on the rise from 2005 to 2007. See G.19, *supra* note 3. We think these data suggest a worsening (or at best a stagnating) financial position, not an improving one, in the general population.

⁸⁴We cannot analyze the variance of the general population data. Accordingly, we also cannot exclude the possibility that BAPCPA was sorting those with worsened debt loads from those with *much* worsened debt loads, with the latter being the "can't-pays" still in the system and the former the "can-pays" driven from it. As we mention below, see *infra* text accompanying notes 86-88, we do not recall rhetoric in the BAPCPA debates that Congress was planning to bar low-income people from filing bankruptcy who had debt loads even worse than the 2001 median debtor in bankruptcy.

filed in earlier studied years. The logical inference is that, when measured by income profile, the 800,000 families that did not file, as a statistical group, also looked like those who did file—both those who filed before the 2005 amendments and those who still managed to file after the amendments became law.

It is possible that a horde of rich people suddenly filed for bankruptcy relief beginning in 2002 (after our earlier data collection) and that they were then pushed back out of the system by the 2005 amendments, but such a tale has no empirical support. It also requires two massive changes in behavior, undetected (or at least unreported) by any judge, lawyer, academic, creditor or other observer of the bankruptcy system.⁸⁵ If, instead, we assume that there were no seismic changes in the composition of the debtors prior to 2005, then the data support the inference that the 800,000 families pushed out of bankruptcy had incomes roughly equivalent to those who filed.

Yet the debtors who filed in 2007 *were* substantially different from their earlier counterparts in one critical respect: they were in a much deeper financial hole. This change, however, is part of an ongoing trend, making it an unlikely consequence of BAPCPA. Doctor Sullivan and Professors Warren and Westbrook reported in earlier work that from 1981 through 2001, debt loads rose and debt-to-income ratios increased for households in bankruptcy.⁸⁶ The 2007 findings were directly in line with these trends.

What does this allow us to conclude about the 800,000 who did not file? We think there are two possibilities, given that the debt loads and debt-to-income ratios for the population as a whole were also deteriorating during this same period. First, it could be that the missing 800,000 had debt loads and debt-to-income ratios similar to the (worsened) profiles of those filing for bankruptcy in 2007. Second, it could be that they had better debt loads and debt-to-income ratios than those who filed for bankruptcy in 2007—that they were, relatively, better off—but that they still had worse loads and ratios than those who were filing for bankruptcy in 2001.⁸⁷ Neither strikes us as an encouraging development.

If the debt loads and debt-to-income ratios of the 800,000 squeezed out were just as bad as those who still filed for bankruptcy in 2007, then we have yet more evidence of BAPCPA's pernicious effects in excluding people randomly from financial relief. If the debt loads and debt-to-income ratios were better (even if their incomes were the same), then there is still no cause to

⁸⁵It also requires a peculiar twisting of the bankruptcy filing data of steady year-by-year increases from 2001 through 2004: it would have to assume that the supply of low-income debtors had reached a cap and all subsequent filers were exclusively high-income.

⁸⁶See *Less Stigma*, *supra* note 34, at 229-31, 238-40.

⁸⁷We dismiss as implausible in light of the general population data the possibility that they had *better* financial circumstances than their 2001 counterparts.

celebrate. This is because if the 800,000 non-filing families looked like their counterparts who filed back in 2001 (itself an already optimistic assumption given the deteriorating financial circumstances of the general population's debt loads and debt-to-income ratios), then according to the 2001 data, they were still struggling with total debts that exceeded two and a half years of income and short-term debts that matched about nine months of income, all without seeking protection that had once been readily available to them. If this latter scenario were true, then BAPCPA represents an implicit policy conclusion that this is a desirable steady state of debt for an American family and an appropriate place to deny bankruptcy protection. That claim was never part of the political debate that preceded the adoption of BAPCPA.

BAPCPA was advanced with a narrative that while some could not afford to pay their creditors in bankruptcy, many others could, and the new law would sort the can-pays from the can't-pays. But even with our most optimistic assumptions regarding the debt loads of the 800,000 non-filing families—that they were lighter than those still filing—we still cannot escape the fact that those debt loads were worse than they were for those going bankrupt in 2001. Thus, even with these best-case assumptions, BAPCPA does not appear to be sorting can-pays from can't pays; it appears to be sorting can't-pays with high debt loads from similar income range can't-pays with *even higher* debt loads.⁸⁸

If either of these interpretations of the debt load data is correct—that any financial sorting was either non-existent or at best a gradation of inability to pay—then it may be that the 800,000 in 2007 who might otherwise have filed will find their way to bankruptcy in 2008 or 2009. As Professor Robert Lawless has demonstrated, national consumer debt loads and bankruptcy filing rates tend to work in tandem over the long term.⁸⁹ Perhaps BAPCPA will magnify the lag time between incurring the debts and filing for bankruptcy, rather than reduce the debt-bankruptcy connection. The answer to such speculation lies in the future. For now, we stick to what we know: the families filing for bankruptcy in 2007 were in more desperate financial shape than their counterparts of earlier years, but those differences bear no apparent link to BAPCPA's means test. Worse yet, we have no reason to think that the 800,000 left behind were in meaningfully better financial shape.

V. DISCUSSION: STRATEGIC ACTORS, SHOCKS, SWEAT BOXES, SUBTERFUGE, STIGMA AND MORE

The data from this first report of the 2007 Consumer Bankruptcy Project shed somber light on the efficacy of BAPCPA. Those hoping for a quick fix

⁸⁸See *supra* note 84.

⁸⁹Robert M. Lawless, *The Paradox of Consumer Credit*, 2007 U. ILL. L. REV. 347 (2007).

to complex problems surely took heart in the initial reports that the absolute number of people filing for bankruptcy declined after the amendments, even after adjusting for likely transition effects.⁹⁰ By 2007, an estimated 800,000 families that otherwise would have filed did not seek bankruptcy protection. But the more pressing question is not *whether* people left the system, but *who* left the system (and *why*). To try to understand that puzzle, we turn to prominent academic theories of consumer bankruptcy to see if they help explain our data and account for the missing 800,000 squeezed from the system after BAPCPA.

First, we consider the strategic actor model that has been advanced by a number of scholars and policymakers to explain the consumer bankruptcy system. In an important article supporting BAPCPA, Judge Edith Jones and Professor Todd Zywicki claimed that tougher bankruptcy laws would cause people to reduce their own debt loads.⁹¹ Following classical economic logic, they explained that the then-current bankruptcy law created a moral hazard because people knew they had a safety net. If a strict means test were added to the bankruptcy law, they reasoned, fewer people would seek bankruptcy because they would exercise greater discipline over their spending to reduce their reliance on the (toughened) bankruptcy system when debts got out of control.⁹² With fewer people needing bankruptcy, bankruptcy filings would decline.⁹³ When bankruptcy filings spiked before the new laws went into effect, Professor Zywicki suggested these transition filers were the very strategic debtors he envisioned, shrewdly seeking relief in advance of the tough new laws.⁹⁴

By 2007, the strategic actors envisioned by Jones and Zywicki should have been cleaned out of the system. They supposedly swelled the bankruptcy filing numbers on the eve of implementation of BAPCPA and then were gone. Yet our data show that while the bankruptcy numbers declined, the debt loads did not fall. In fact, they rose. Both inside and outside bankruptcy, net equity plunged and debt-to-income ratios soared. Thus the pre-

⁹⁰152 CONG. REC. S10647-48 (daily ed. Sept. 29, 2006) (statement of Sen. Grassley).

⁹¹Edith H. Jones & Todd J. Zywicki, *It's Time for Means-Testing*, 1999 BYU L. REV. 177, 215-21.

⁹²*Id.* at 209 ("If discharge of debts is easy in bankruptcy, debtors will incur more debt. Conversely, if obtaining bankruptcy relief is difficult, debtors will be more reluctant to incur debts."); *see also id.* at n.114.

⁹³*Id.* at 208.

⁹⁴Professor Zywicki explains:

Do consumers respond to incentives to file bankruptcy? The experience of the past few months strongly suggests "yes." Although this is obviously very casual empiricism, it is backed by a volume of economic theory that predicts that consumers would respond to anticipated changes in the bankruptcy laws exactly as they apparently have—by rushing to file bankruptcy before the new law takes effect.

Posting of Todd J. Zywicki to The Volokh Conspiracy Blog, http://volokh.com/archives/archive_2005_06_19-2005_06_25.shtml#1119645927 (June 24, 2005).

dicted belt-tightening after the exorcism of these strategic actors does not seem to have happened. While Professor Zywicki and Judge Jones may have correctly presented classical economic theory, the data, at least so far, have not borne out their claims.⁹⁵ As such, we need to look elsewhere for a theory that helps explain our data.

An alternative model of consumer bankruptcy has been advanced by Dr. Sullivan and Professors Warren and Westbrook.⁹⁶ They argue that exogenous shocks trigger many bankruptcies. Families are driven to bankruptcy when they suffer serious economic dislocations, such as job loss, medical problems or family breakups.⁹⁷ From their perspective, Jones-Zywicki belt-tightening predictions are largely beside the point because bankruptcy has little to do with profligate spending. Yet the Sullivan-Warren-Westbrook model also cannot explain our findings on its own. It does not predict the sharp decline in bankruptcy filings we see in our data. Because there have been no dramatic improvements in health care delivery, employment prospects or family stability, their model would predict constant, not diminished, rates of filing.⁹⁸

Similarly, if bankruptcy filings are related either to the high debt loads that are fostered by the structure of the payment systems, as suggested by Professors Ronald Mann⁹⁹ and Robert Lawless,¹⁰⁰ or by rising economic pressure on middle class families, as suggested by Professor Warren and Ms. Amelia Tyagi,¹⁰¹ then the changes in bankruptcy laws were similarly unlikely to have had a significant effect on behavior. These models are consistent with rising debt loads among families who file, but not with the concomitantly pronounced decrease in bankruptcies observed after the adoption of the amendments.

The data are consistent, however, with at least one theory of consumer debt: Professor Mann's sweat box theory of lending. Mann argues that the

⁹⁵We recognize that debts are accrued over months and years and that turning an ocean liner takes time. So while we express some hesitation at BAPCPA's prospects in reducing debt acquisition, we reserve final judgment to a later point in time after many more data have been gathered.

⁹⁶See, e.g., FRAGILE MIDDLE CLASS, *supra* note 30.

⁹⁷See *id.* at 155, 197; see also Li Gan & Tarun Sabarawal, *A Simple Test of Adverse Events and Strategic Timing Theories of Consumer Bankruptcy* (Nat'l Bureau of Econ. Research, Working Paper No. 11763, Nov. 2005), available at <http://www.nber.org/papers/w11763.pdf> (last visited Sept. 3, 2008) (constructing model using the Panel Survey of Income Dynamics data to conclude that personal bankruptcy filings are more likely determined by exogenous events than strategic behavior).

⁹⁸When bankruptcy filings decline sharply, the exogenous shock model is consistent with the continuing presence of families in need of bankruptcy. If they are indeed out there, as we suspect they are, then it likely means they are being excluded from bankruptcy inefficiently and unfairly.

⁹⁹RONALD J. MANN, CHARGING AHEAD: THE GROWTH AND REGULATION OF PAYMENT CARD MARKETS 177 (2006).

¹⁰⁰See Lawless, *supra* note 89, *passim*.

¹⁰¹TWO-INCOME TRAP, *supra* note 31, at 180.

goal of the means test in BAPCPA was never to sort out can-pay debtors or to squeeze more payments from families in bankruptcy. Instead, he argues that what lenders really wanted from BAPCPA was more delay *before* filing bankruptcy.¹⁰² Mann observes that many credit card lenders have developed business models and fee structures that will allow a substantial boost of profit whenever families delay a bankruptcy filing. Mann thus reasons that the aspects of BAPCPA that should have the biggest impact on debtors are those that increase costs, insert more delays or otherwise raise the bar of desperation that a family must feel before making the decision to file for bankruptcy.¹⁰³ Provisions that increase the amount of paperwork and documentation debtors must produce,¹⁰⁴ that require debtors to engage in pre-bankruptcy and during-bankruptcy counseling,¹⁰⁵ and that drive up the costs for attorneys to provide their services would,¹⁰⁶ according to this model, have a far greater impact on whether cash-strapped families in financial trouble turn to bankruptcy than a means test. The post-BAPCPA families' higher debt loads, declining net worths, and higher debt-to-income ratios offer data that are consistent with his analysis.¹⁰⁷

Professor James J. White takes a similar position, speculating that BAPCPA was a game of subterfuge. The true goal of the legislation may have been to make bankruptcy more undesirable to all, not just to the rich.¹⁰⁸ White argues that the amendments were designed to impose a death by a thousand cuts through low-visibility procedural burdens, and that high-visibility, substantive provisions, such as the means test, were simply distracting bonuses. With a mixture of apparent cynicism and admiration, White implies that the bankruptcy reform effort was an attempt to attack distressed consumers all along the income spectrum—an effort that was hidden behind the more politically acceptable rhetoric of the means test's focus on high-income deadbeats:

By raising the cost in hundreds of little ways, you might make bankruptcy unpalatable to many who currently take bankruptcy. . . . Nor would you be obliged to admit that the

¹⁰²Mann, *supra* note 19, at 378–79.

¹⁰³*Id.* at 392–97.

¹⁰⁴*See, e.g.*, 11 U.S.C. § 521 (2006) (debtors' filing obligations).

¹⁰⁵*See* 11 U.S.C. §§ 109(h)(1), 727(a)(11), 1328(g) (2006).

¹⁰⁶*See, e.g.*, 11 U.S.C. § 707(b)(4) (2006) (attorney liability sections).

¹⁰⁷One interesting new study conducted after BAPCPA finds not only that the change in law has been profitable for credit card lenders, but that none of that surplus has been shared with consumers. *See* Michael Simkovic, *The Effect of 2005 Bankruptcy Reforms on Credit Card Industry Profits and Prices* (Working Paper, July 8, 2008), available at <http://ssrn.com/abstract=1157158> (finding consumers are paying higher interest rates, late fees and overlimit fees after the amendments' implementation despite the lobbying promise that BAPCPA would eliminate alleged "bankruptcy tax" on non-bankrupt borrowers).

¹⁰⁸*See* James J. White, *Abuse Prevention 2005*, 71 Mo. L. Rev. 863 (2006).

true reason for advocating these bureaucratic changes was to degrade the machinery of bankruptcy; these rules could be justified as palliatives for acknowledged ills of the system.¹⁰⁹

Mann's theory of the creditors' sweat box, White's speculation on the real intent of BAPCPA, and our own findings about the increases in debt loads caused us to analyze two additional pieces of data. We report them here, in our discussion, because it was only after we reflected on our primary findings that we saw the importance of these results.

In both 2001 and 2007, the telephone surveys of the families in bankruptcy included questions about how long they had been seriously struggling with their debts before they filed for bankruptcy and about their experiences with debt collectors. The how-long-seriously-struggling options were blunt, pre-set categories. Indeed, the responses suggest that when we designed the question we had not fully anticipated how long people struggled with debts before filing. The modal answer was the longest interval category available: more than two years. More importantly for these purposes, the proportion of debtors choosing "more than two years" jumped significantly from 32.6% in 2001 to 43.8% in 2007.¹¹⁰ Thus it may not be that the 800,000 non-filers have truly left the system; they may just be circling the drain longer.¹¹¹ Again, more time will be needed to know what will ultimately happen to families squeezed from the bankruptcy system.

The increase in the length of time that people postpone filing for bankruptcy is consistent with creditor efforts to trap debtors longer in the sweat box, regardless of whether they eventually end up in bankruptcy. The increase in time struggling in the 2007 sample is particularly noteworthy because of the sharp increase in "transition bankruptcies" in 2005. Based on the Jones and Zywicki predictions about strategic behavior, it would be reasonable to assume that people on the margin economically would have joined the rush to file for bankruptcy before the new law went into effect in 2005. To the contrary, our data suggest that many families that were already in trouble resisted "unstrategically," only to end up in bankruptcy two years later.

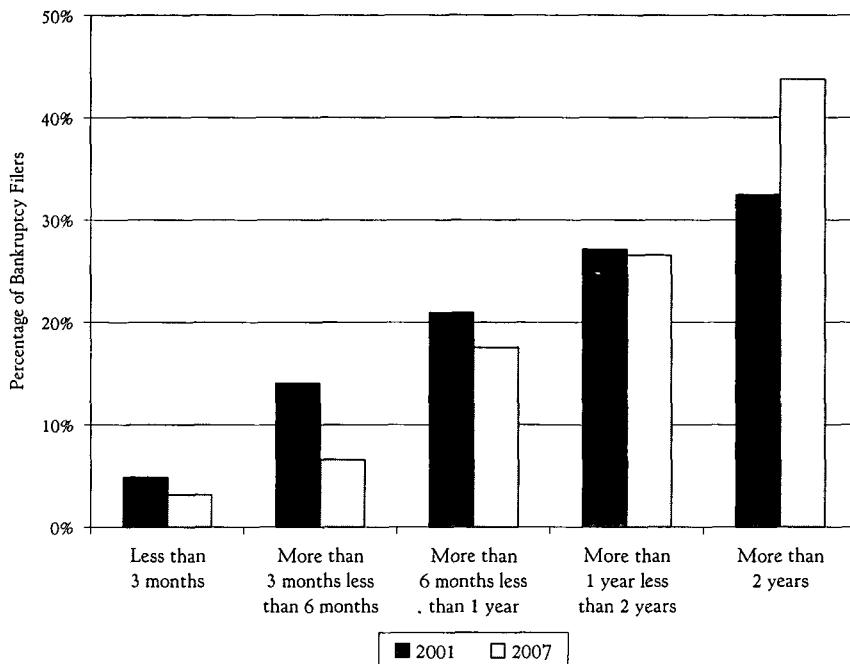
The data offer another possible explanation of why 800,000 families in serious financial trouble could be missing from the bankruptcy rolls. In the telephone survey of those who filed in 2007, 82% of households reported

¹⁰⁹*Id.* at 874.

¹¹⁰Pearson chi-square = 37.570, $p < .001$; Cramer's $v = .153$, $p < .001$. It is significant that we can offer internal comparison with our 2001 data. For those who think our respondents self-congratulate themselves regarding how long they struggled before filing, we offer this comparative perspective: whatever the level of self-congratulatory distortion is (if any), there is no reason to assume it varies over time. Thus, the relative increase from 2001 to 2007 is noteworthy.

¹¹¹See Lawless, *supra* note 89, *passim* (presenting data on long-term correlation between debt and bankruptcy).

FIGURE 12: TIME SERIOUSLY STRUGGLING
BEFORE BANKRUPTCY



Source: Consumer Bankruptcy Project (see text)

calls from debt collection agencies. Of these families, nearly a quarter—23.6%—said the debt collectors had raised the subject of bankruptcy explicitly, threatening what would happen if they filed. More than half who received such warnings recount being told by the debt collector that it was “illegal” to file for bankruptcy, or that, if they filed, they might go to jail, the I.R.S. would audit them, or they could lose their jobs.¹¹² The remainder received a mix of misinformation, including the oft-repeated “you won’t qualify.” These data suggest that after the 2005 amendments, the newly emboldened debt collectors may have had an important influence on people’s willingness to file. In the wake of the publicity about the changes in the laws,

¹¹²Of the 845 debtors who had been contacted by a debt collector, these were the recorded responses:

1. It was illegal to file bankruptcy: 4.9% (n=41)
2. You might go to jail if you filed: 3.9% (n=33)
3. I.R.S. would audit you if you filed: 7.3% (n=62)
4. You might lose your job if you filed: 8.5% (n=72)
5. Something else might happen if you filed: 19.4% (n=164) (text fields recorded).

Overall, 12.9% (n=133) reported one or more responses in categories 1 through 4. The total with a response in any of 1 through 5 was 23.6% (n=244).

debt collectors apparently worked hard to make debtors believe bankruptcy relief was now cut off.

At least one expert shares this view. According to Bankruptcy Judge Michael Williamson:

I don't think [the low filing rate] is a sign that people are not in financial difficulties. It's just a sign that they have been scared off. From the anecdotal feedback we get, people apparently are being told by debt collectors that bankruptcy is no longer available.¹¹³

Judge Williamson's description strikes us as plausible. If one in four of the families that made their way to bankruptcy had been receiving direct, personal advice that they would be ineligible for bankruptcy (including, for some, that it was "illegal" to file) or some other cautionary advice, perhaps more people waited to file, which would explain why these debtors are in much worse shape by the time they muster the courage—or resignedly accept the need—to do so. But we are able to survey only those who heard this advice and filed anyway. It is interesting to speculate about the kind and amount of advice that debt collectors gave to the 800,000 similar families who were also in serious trouble but decided not to file.

The importance of these additional findings is two-fold. First, these data reinforce Mann's sweat box theory by suggesting creditors' desires to scare away debtors from bankruptcy for as long as possible to maximize the sweating. Second, they provide an explanation for the decline in filings despite the continuing evidence that families are in serious trouble. Recall the prognostications of the Sullivan-Warren-Westbrook adverse event theory, the Mann theory linking bankruptcies and consumer debt, and the Warren-Tyagi theory that today's families are in much more economic trouble. All predict steady or rising bankruptcy filings; yet the data here suggest increasing hardship in the face of diminished filings. Mann and White, however, predict both diminished filings *and* increased delay and struggle prior to bankruptcy—exactly what we see. We may be witnessing a system for which need is growing, as the scholars cited above have predicted for various reasons, but for which relief is now placed out of reach by debt collectors who enjoy greater success in deterring debtors from filing. The seemingly random reduction of the bankruptcy ranks may be driven by who succumbs and who survives (or avoids or evades) the emboldened efforts of these collectors.

No discussion of who files for bankruptcy and why would be complete without at least some mention of stigma. Before BAPCPA, many argued that

¹¹³Helen Huntley, *Quiet in the Court*, ST. PETERSBURG TIMES, Oct. 8, 2006, at 1D (quoting Hon. Michael Williamson).

bankruptcy's stigma had diminished,¹¹⁴ which indeed motivated some legislators' support of the bill.¹¹⁵ Bankruptcy filings had presumably risen because personal bankruptcy had lost much of its stigma. In earlier work, however, Sullivan, Warren and Westbrook examined the data from 1981, 1991 and 2001, and questioned whether the flat incomes and rising debt loads that families carried when they filed for bankruptcy were consistent with the premise that the stigma of bankruptcy was declining.¹¹⁶ If bankruptcy were not personally embarrassing, they reasoned, more cases would be filed by individuals who were relatively better able to repay their debts. Instead, the data pointed to the opposite conclusion; filers were not getting richer, they were getting poorer.¹¹⁷

Although it ran contrary to much political rhetoric surrounding the debate on the amendments, Sullivan, Warren and Westbrook's indirect evidence of persistent stigma was also buttressed by sociological research.¹¹⁸ For example, in an important analysis of bankrupt debtors, Drs. Deborah Thorne and Leon Anderson found that stigma remains a pervasive feature of the landscape of contemporary consumer bankruptcy.¹¹⁹ Direct interviews showed that newly bankrupt individuals rely upon a wide range of management techniques that are typically employed by members of other stigmatized groups, such as the homeless, victims of HIV and AIDS, and gays and lesbians. Thorne and Anderson's interview respondents reported that, prior to their bankruptcies, they shared the prevailing social sentiment that people who file are deadbeats who intentionally "rip off the system."¹²⁰ When confronted with their own financial failures, they relied upon recognized techniques to manage the stigma—they tried to hide their circumstances from others, to differentiate themselves from those people whom they believed would fit the stereotype of illegitimate bankruptcy filers, and provided justifications and excuses for their financial transgressions.¹²¹

This research suggests that the death of bankruptcy stigma might have been greatly exaggerated. If so, then one possible reason for the decline in bankruptcy filings after the amendments may have been heightened stigma.

¹¹⁴Jones & Zywicki, *supra* note 91, at 215–21.

¹¹⁵"Bankruptcy has become so common that it has lost the stigma it had even a short generation ago. Today it is just another method for getting out of debt, a tool just to get out of debt." 151 CONG. REC. S1813 (daily ed. Mar. 1, 2005) (statement of Sen. Frist).

¹¹⁶See *Less Stigma*, *supra* note 34, at 238.

¹¹⁷*Id.* at 239.

¹¹⁸Sullivan, Warren & Westbrook also cite direct evidence on persisting stigma. See *Less Stigma*, *supra* note 34, at 243 (self-assessments of negative life events). See *id.* at 246 (hiding bankruptcy from friends and family).

¹¹⁹Deborah Thorne & Leon Anderson, *Managing the Stigma of Personal Bankruptcy*, 39 SOC. FOCUS 77, 77–97 (2006) (interviews with 37 newly bankrupt families).

¹²⁰*Id.* at 83.

¹²¹See *id.* at 90.

Indeed, BAPCPA may have accelerated trends of increasing stigma already afoot. For example, in reflecting on their own findings on stigma, Sullivan, Warren and Westbrook noted that although a 1981 bankruptcy filing was quite unlikely to be discovered by anyone who was not a creditor, a filing in 2001 was readily discoverable with a few clicks on the internet.¹²² Perhaps the increased disinclination to file in 2007 across all income groups reveals an intensified sting of social penalty. The stigma of bankruptcy—already rising in an increasingly fishbowl culture—may have become stronger after the high-profile public debates of BAPCPA in which bankruptcy filers were portrayed as deadbeats who abused the system.¹²³ We cannot say much for sure at this time, but we can present this possibility, and we look forward to reporting in subsequent articles on the further measures of stigma we gathered in our research. For now, we simply pause to reconsider the political debates surrounding the amendments. When Congress promised that high-income can-pay debtors would be forced out of bankruptcy, did it really mean, as our data could indicate, that “can-pay” actually meant “the most easily shamed or intimidated”?¹²⁴

VI. CONCLUSION

The Consumer Bankruptcy Project is the first random national sample of families that filed for bankruptcy after the 2005 amendments. Our initial findings should dampen the enthusiasm with which some trumpet BAPCPA's success in reducing the number of bankruptcies. The principal feature of the amendments was an income-based screen that was supposed to differentiate can-pay debtors from their can't-pay counterparts. The data suggest that this failed: there is no differentiation based on income, either for the sample as a whole or for the division of families into Chapter 7 and Chapter 13. Instead, the data suggest that the incomes of the families filing for bankruptcy after the amendments are indistinguishable from the incomes of the families filing for bankruptcy before the amendments.

By its own design, the means test focused on income. It did not take account of the overall financial condition of debtors; net worth and debt-to-

¹²²See *Less Stigma*, *supra* note 34, at 243.

¹²³“Personal bankruptcies are soaring because Americans have lost their sense of shame.” Julie Kosterlitz, *Over the Edge*, 29 NAT'L J. 870, 871 (1997) (quoting then-Federal Reserve Board Chairman Alan Greenspan).

¹²⁴When the 1978 Code was enacted, express steps were taken to *reduce* the stigma of bankruptcy. The National Bankruptcy Review Commission Report observed, “The Code, for instance, replaced the term ‘bankrupt’ with ‘debtor’ and described a case filing as seeking an ‘order for relief.’” EDITH H. JONES & JAMES I. SHEPARD, NAT'L BANKR. REV. COMM'N, ADDITIONAL DISSENT TO RECOMMENDATIONS FOR REFORM OF CONSUMER BANKRUPTCY LAW, available at <http://govinfo.library.unt.edu/nbrc/report/24commvi08.html> (last visited Sept. 3, 2008). We are unaware of any express efforts to cast more shame on and raise the sense of stigma of all debtors under BAPCPA.

income ratios were irrelevant to the new law. While secured debt received some favored treatment,¹²⁵ the size and impact of unsecured debt loads, such as credit card and medical debt, were largely ignored. With only slight exceptions,¹²⁶ families that owe a little and families that owe a lot of unsecured debt are equally eligible for Chapter 7 relief once they have survived the income-based means test. Yet this is where our additional findings reveal important differences with the 2007 filers. After the amendments, families filing for bankruptcy owe more debt, particularly more unsecured consumer debt, than their counterparts from 2001 and are having a much harder time servicing that debt with disposable income.

The higher debt-to-income ratios among the families that filed bankruptcy in 2007 suggest that Americans are struggling harder than ever before they collapse into bankruptcy. Whether they are discouraged by the negative publicity surrounding the 2005 amendments, concerned about the stigma associated with bankruptcy, or dissuaded by aggressive debt collectors who bully them into believing they can no longer file for bankruptcy, it is clear that families are not turning to bankruptcy even when they have great need. This is a result Congress neither intended nor promised.

¹²⁵See 11 U.S.C. § 707(b)(2)(A)(iii) (2006).

¹²⁶Unsecured debts are of course indirectly relevant in calculating the means test's threshold, see 11 U.S.C. § 707(b)(2)(A)(i)(I) (2006), but we spare our readers this tangent of statutory torture. So too we omit the means test's treatment of priority unsecured debts. See 11 U.S.C. § 707(b)(2)(A)(iv) (2006).

APPENDIX I: DETAILED METHODOLOGY

The Consumer Bankruptcy Project (“CBP”) consists of four empirical studies of the economics and demographics of consumer bankruptcy debtors. The studies have frequently been identified in two ways: the year in which the sample of debtors filed bankruptcy (1981, 1991, 2001, and 2007) and a Roman numeral to label each study (CBP I, CBP II, etc.).¹²⁷ As the investigators have learned more about the people who file for bankruptcy, each iteration of the CBP has differed slightly in its approach. Collectively, however, the studies offer a rich profile of the families in bankruptcy over the last two and a half decades. This section summarizes the methodology of the three prior studies in the CBP series and provides a detailed methodology of the newest CBP study (“CBP IV”), which collected data on consumers who filed bankruptcy in 2007.

All four CBP studies share certain attributes. In each study, only individuals filing under Chapter 7 or Chapter 13 of the Bankruptcy Code were included in a sample. Individual (non-entity) debtors can file bankruptcy under other chapters of the Bankruptcy Code, but these cases are very rare and were excluded from all studies.¹²⁸ There is no single, perfect standard for classifying a case as a consumer case, rather than a business case.¹²⁹ If the debtor’s name on the bankruptcy petition was not that of an individual person (i.e., it was a legal entity such as a corporation or a partnership), the case was treated as a business matter. All four CBP studies consistently applied that standard.

All four studies also owe their success to the contributions of many people. Each study has been a collaboration of several scholars. From the beginning, the CBP was interdisciplinary in its approach. This orientation has strengthened in successive years. Each study relied to at least some extent on the cooperation of the U.S. bankruptcy courts or bankruptcy professionals who facilitated the research. All studies were funded by grants from government agencies or non-profit institutions. In this Article, we identify and thank the people and organizations that facilitated the current 2007 study, CBP IV. Because of the tangible or financial support of such parties, the CBP has expanded its research aims.

¹²⁷See *Less Stigma*, *supra* note 34, at 218 (describing the prior studies by year and numeral).

¹²⁸Some individuals may file for bankruptcy in either Chapter 11 or Chapter 12. For a discussion of this phenomenon, see Elizabeth Warren & Jay Lawrence Westbrook, *Contracting Out of Bankruptcy: An Empirical Intervention*, 118 HARV. L. REV. 1197, 1213 n.55 (2005); Elizabeth Warren & Jay Lawrence Westbrook, *Financial Characteristics of Businesses in Bankruptcy*, 73 AM. BANKR. L.J. 499 (1999).

¹²⁹Robert M. Lawless & Elizabeth Warren, *The Myth of the Disappearing Business Bankruptcy*, 93 CAL. L. REV. 745 (2005) (reprinted in 47 CORP. PRAC. COMMENTATOR 593 (2005)).

A. THE THREE PRIOR STUDIES

1. CBP I (1981)

The first project (CBP I) examined consumer bankruptcy cases filed in 1981.¹³⁰ The sample was built from the systematic selection of individual bankruptcy cases filed during the entire 1981 calendar year.¹³¹ Inclusion in the sample did not rely on voluntary participation from bankruptcy debtors. By filing a bankruptcy case, any debtor had an equal chance of being included in the sample.¹³² The CBP I had a limited geographic scope. The sample consisted of 150 cases filed in each of the ten federal judicial districts in three states: Illinois, Pennsylvania and Texas.¹³³ The sample reflects the proportion of Chapter 7 and Chapter 13 cases that were filed in six of the districts. In four of the districts, because of the very low proportion of cases filed in Chapter 13, there was an oversampling of Chapter 13 cases.¹³⁴

The quantitative data in the CBP I come solely from the bankruptcy petition and schedules and the court docket.¹³⁵ These sources provided a detailed profile of debtors' financial conditions at the time of bankruptcy, including income, assets, and debts.¹³⁶ The researchers supplemented these data with interviews with bankruptcy judges and lawyers who were asked to describe the consumer bankruptcy system.¹³⁷

2. CBP II (1991)

The CBP II studied consumer bankruptcy cases in 1991.¹³⁸ Just as with the CBP I,¹³⁹ the second project collected data on income, assets and debts from bankruptcy court records.¹⁴⁰ The CPB II used a different sample selection method and added a second research instrument, a written questionnaire that gathered demographic data that are not available in the court records.¹⁴¹

Debtors were included in the CBP II sample if they filed a consumer bankruptcy case during the first half of 1991 and completed a written questionnaire. The questionnaires were given to debtors who filed cases in the states of Illinois, Pennsylvania, Texas, California, and in two judicial districts

¹³⁰Teresa A. Sullivan, Elizabeth Warren and Jay Lawrence Westbrook were the three principal investigators of CBP I.

¹³¹*Ten Years Later*, *supra* note 34, at 125; *see also* AS WE FORGIVE, *supra* note 29 (describing the sampling method as a "systematic procedure that approximates random sampling").

¹³²*Ten Years Later*, *supra* note 34, at 150; *Less Stigma*, *supra* note 34, at 219.

¹³³*Ten Years Later*, *supra* note 34, at 125.

¹³⁴AS WE FORGIVE, *supra* note 29, at 344; *id.* at 348 tbl.A2 (reporting sampling fractions).

¹³⁵*Ten Years Later*, *supra* note 34, at 125.

¹³⁶AS WE FORGIVE, *supra* note 29, at 63-69.

¹³⁷*Less Stigma*, *supra* note 34, at 218; AS WE FORGIVE, *supra* note 29, at 351-53.

¹³⁸*Ten Years Later*, *supra* note 34, at 125.

¹³⁹The same trio of researchers in CBP I were the principal investigators of CBP II.

¹⁴⁰*Ten Years Later*, *supra* note 34, at 125.

¹⁴¹FRAGILE MIDDLE CLASS, *supra* note 30.

in Tennessee.¹⁴² Most commonly, the questionnaires were distributed to debtors at the required meeting with the bankruptcy trustee assigned to their case, but sometimes the questionnaire was given to the attorney or debtor at the time of the bankruptcy filing.¹⁴³ Those who did not complete or partially complete a questionnaire were excluded from the sample.¹⁴⁴ This procedure was subject to response bias, but prior analysis found minimal evidence of such an effect in the financial data.¹⁴⁵ Thousands of questionnaires were returned.¹⁴⁶

The written questionnaire was voluntary and confidential.¹⁴⁷ It was a single page, consisted almost entirely of closed-ended questions, and was made available in both English and Spanish.¹⁴⁸ The questionnaire gathered demographic data on each debtor's age, gender, education, occupation, marital status, educational background, and race or ethnicity.¹⁴⁹ Debtors were asked to provide their names, case numbers, and reasons for their bankruptcy.

Using this information, the researchers matched a sample of the questionnaires to the corresponding debtors' public court records.¹⁵⁰ This subsample consisted of 150 randomly selected cases from one district in each of the states of Illinois, Pennsylvania, Texas, California, and Texas.¹⁵¹ Numerous details on each debtor's financial condition were coded from the court records, providing comparable data to the CBP I sample.¹⁵²

3. CBP III (2001)

The CBP III studied people who filed consumer bankruptcy cases in 2001.¹⁵³ For this third project, the size and interdisciplinary orientation of the research team expanded,¹⁵⁴ and additional research instruments were added to enrich the amount and type of data. The CBP III sample was constructed by distributing written questionnaires to consumer bankruptcy debtors at the required meeting with their trustees in the first half of 2001.¹⁵⁵ The geographic scope of the sample was the same five districts used

¹⁴²*Id.* at 266 (noting that no questionnaires were distributed in the Eastern District of Tennessee).

¹⁴³*See id.* at 268; *Less Stigma*, *supra* note 34, at 219–20; *see also Ten Years Later*, *supra* note 34, at 126 (describing the meeting of creditors that each debtor is required to attend).

¹⁴⁴*See* FRAGILE MIDDLE CLASS, *supra* note 30, at 263–64 (describing the 1991 questionnaire).

¹⁴⁵*Less Stigma*, *supra* note 34, at 220; FRAGILE MIDDLE CLASS, *supra* note 30, at 277–79.

¹⁴⁶*See Ten Years Later*, *supra* note 34, at 126 (describing the total size of CPB II questionnaire sample).

¹⁴⁷*See* FRAGILE MIDDLE CLASS, *supra* note 30, at 266–68.

¹⁴⁸*Id.* at 269, 271.

¹⁴⁹*Id.* at 264; *see also Ten Years Later*, *supra* note 34, at 125–26.

¹⁵⁰FRAGILE MIDDLE CLASS, *supra* note 30, at 264.

¹⁵¹*Id.* at 266; *see also Ten Years Later*, *supra* note 34, at 126 (stating that “[f]ive cases were eliminated as outliers from the analysis of respondents”).

¹⁵²FRAGILE MIDDLE CLASS, *supra* note 30, at 264.

¹⁵³TWO-INCOME TRAP, *supra* note 31, at 181–82.

¹⁵⁴Elizabeth Warren, *Financial Collapse and Class Status: Who Goes Bankrupt?*, 41 OSGOOD HALL L. REV. 115, 122 (2003).

¹⁵⁵*Id.* at 123 n.16.

to collect the five-district court record sample in CBP II, except that the Northern District of Texas replaced the Western District of Texas.¹⁵⁶ In each district, 250 returned questionnaires were collected,¹⁵⁷ resulting in a total sample of 1250.¹⁵⁸ The sample reflected the proportion of Chapter 7 and Chapter 13 questionnaires filed in each district.¹⁵⁹

The CBP III questionnaire was voluntary and confidential as with CBP II,¹⁶⁰ but was considerably more comprehensive than the prior study's questionnaire.¹⁶¹ Demographic data and reasons for bankruptcy were gathered again, as well as information on each debtor's medical bills, homeownership and home loans, self-employment status, and prebankruptcy situation. On its last page, the CBP III questionnaire offered \$50 to debtors who would complete follow-up telephone interviews.¹⁶²

For each of the returned questionnaires, the researchers coded data from the debtor's corresponding bankruptcy court records.¹⁶³ The coded information included debtors' income, assets and debts as reported in the petition and schedules, including all fields coded in 1981 and 1991.¹⁶⁴

Telephone interviews were conducted with all sample members who indicated a willingness to be interviewed and provided valid contact information.¹⁶⁵ From the CBP III sample of 1250 cases, an initial one-hour telephone interview was conducted in 2002 for about half the cases (602 debtors) for a response rate of 48.1%. This interview was conducted approximately one year after the bankruptcy cases were filed and had four main sections: 1) general questions; 2) questions on medical issues; 3) questions on small business ownership; and 4) questions on homeownership. The latter three subsections were only asked of debtors whose responses to the questionnaire or the general telephone questions indicated that such topics would be applicable.¹⁶⁶ In 2004, approximately three years after the debtors in the CBP III sample had filed bankruptcy, a second round of interviews was conducted with all debtors who completed the one-year interview and could be reached. This sample consisted of 474 families from the core questionnaire sample of 1250 cases. This translates into a response rate for the three-year interview of

¹⁵⁶*Less Stigma*, *supra* note 34, at 219.

¹⁵⁷TWO-INCOME TRAP, *supra* note 31, at 182-83.

¹⁵⁸A supplemental sample of additional debtors who were homeowners was also collected. This Article uses only the core sample of 1250 cases described in the text.

¹⁵⁹TWO-INCOME TRAP, *supra* note 31, at 182.

¹⁶⁰*See id.* at 183-85 (explaining that some debtors completed the questionnaires and some did not).

¹⁶¹A copy of the 2001 questionnaire is reprinted in Elizabeth Warren, *Bankrupt Children*, 86 MINN. L. REV. 1003 (2002).

¹⁶²TWO-INCOME TRAP, *supra* note 31, at 185.

¹⁶³*Id.* at 186.

¹⁶⁴*Less Stigma*, *supra* note 34, at 218.

¹⁶⁵TWO-INCOME TRAP, *supra* note 31, at 185.

¹⁶⁶*Id.* at 186.

37.9%. The telephone interviews were conducted by a team of trained researchers using computer-assisted interviewing technology.

Each of the first three CBP studies collected data from the court records of consumer bankruptcy debtors. While the geographic scope and sample size of these studies varied somewhat, the court record data offer a consistent set of variables that measure the economic profiles of people who filed bankruptcy cases. Collectively, these data provide a backdrop for examining the financial pressures facing families who enter the consumer bankruptcy system.

B. THE CURRENT STUDY—CBP IV (2007)

The current CBP builds upon the findings of our prior studies to establish the largest and most complete database of consumer bankruptcy debtors collected to date. The main methodological improvement in CBP IV is its use of a random, national sample of all bankruptcy cases to solicit respondents. The CBP IV is also the largest study to date, with court record data and questionnaire data available for approximately 2500 consumer bankruptcy cases.

1. *Sample*

Beginning in the first week of February 2007 and continuing for five consecutive weeks, we collected the following information from every bankruptcy petition that had been filed in the United States during that week: petitioners' names, addresses, and chapter filed.¹⁶⁷ Approximately 12,500–15,000 cases were filed each week. From this population, the following cases were deleted: (1) cases filed outside the fifty states and the District of Columbia (e.g., cases filed in Guam and Puerto Rico), (2) cases that were not Chapter 7 or 13 cases, and (3) cases in which the bankruptcy debtor was not an individual person, i.e., the debtor was a legal entity such as a corporation or partnership. From the remaining pool, we randomly selected a weekly sample of 1000 cases, for a total of 5000 cases during the five-week period. A questionnaire, described in the next section, was mailed to the debtors in these cases. Although the questionnaires were mailed promptly after the bankruptcy filings, addresses for some debtors were not valid and hence some correspondence was returned as undeliverable. To replace those cases, an additional random sample of 255 cases was drawn from cases filed in the last week of March and the first week of April 2007. The same procedures were followed with these cases.

A supplemental sample of bankruptcy cases filed by a person aged 65 years or older was gathered to study the financial problems of older Americans. This Article uses only the random sample of all consumer bankruptcy cases described in the preceding paragraph.

¹⁶⁷The 2007 national filing data were supplied through the generous assistance of Mike Bickford and his colleagues at Automated Access to Court Electronic Records ("AACER"), an Oklahoma City-based bankruptcy data and management company.

2. Questionnaire

Immediately after each week's sample was collected, we mailed potential respondents a letter that briefly described the study and explained that they would receive a questionnaire in the mail within the next few days. This letter included a brief note in Spanish that asked anyone who needed a Spanish version of the questionnaire to call a toll-free number.¹⁶⁸ Approximately one week after sending the initial letter, questionnaires were mailed to all respondents. The questionnaire packet included a cover letter, the questionnaire, a stamped return envelope, and \$2 in cash as a token of appreciation.

The questionnaire asked for demographic information similar to that gathered in CBP II and CBP III. It also asked questions that were designed to reveal whether a particular situation applied to a debtor, such as whether the debtor owned his or her home, had student loan debt, or was self-employed. The responses to these questions were used in identifying certain debtors for subsets of specialty questions in the telephone interviews described in Part 4, *infra*. The questionnaire also asked debtors what they did to cope financially before they filed for bankruptcy and what circumstances contributed to their bankruptcies. The questionnaire also provided empty space for debtors to tell the stories of their bankruptcies in their own words. The final page of the questionnaire asked debtors if they would be willing to complete a telephone interview, for which they would be paid \$50 for their time. The entire questionnaire is reprinted in Appendix II.

One week after the questionnaires were mailed, thank you/reminder letters were sent. Research assistants also attempted to contact respondents by phone to remind them to return the questionnaires. The phone numbers either came from the debtors' bankruptcy court records or were found using an online name-driven search engine.

Approximately one month after initial questionnaires were mailed, replacement questionnaires, along with another \$2 in cash, were mailed to those households that had not yet responded to the initial questionnaire mailing. A flyer accompanied the replacement questionnaires that advised debtors of two alternate methods for returning the questionnaire: by calling a toll-free number and talking with a research assistant or by visiting a secure website.

In July 2007, we sent a final letter to any bankruptcy debtors who had not completed a questionnaire and offered them \$50 to complete the questionnaire over the phone or on-line.

We received responses from over half (50.6%) of all cases in the random sample. This includes those questionnaires returned either complete or incomplete or responses from those who indicated that they did not wish to participate. Details of the response rate are provided in the box below.

¹⁶⁸The questionnaire was translated into Spanish by a graduate student of Spanish. To improve the quality of the translation, a different graduate student translated the Spanish version back into English. This back-translation was compared with the English version of the questionnaire.

Questionnaire Response Rate

- 5251 questionnaires were mailed to Chapter 7 or Chapter 13 filers¹⁶⁹
- 275 (5.2%) were returned as undeliverable
4976 questionnaires delivered

From these 4976 delivered questionnaires:

- 2455 (49.3%) questionnaires did not generate any response
- 2521 (50.7%) questionnaires resulted in a response

Of these 2521 responses:

- 2314 (91.8%) questionnaires were returned complete
- 124 (4.9%) questionnaires were returned incomplete
- 83 (3.3%) questionnaires resulted in the debtor responding that he or she did not wish to participate

Total Response Rate: 50.7%, includes questionnaires returned complete, returned incomplete, or refused to participate (combined n = 2521) from all deliverable questionnaires (n = 4976).

For this Article, which relies primarily on court record data that are available for all bankrupt debtors, we use the sample of all respondents who were willing to participate. Thus, the base number of this Article's sample is 2438, which excludes the 83 "refusers" from the 2521 responses. This sample corresponds most closely to the samples used in the prior studies.

Questionnaires were sent to individual debtors who filed either Chapter 7 or Chapter 13 bankruptcies. Chapter 7 debtors returned 66% of the 2438 questionnaires, and Chapter 13 debtors returned the remaining 34%. These numbers vary only slightly from the distribution of cases across the nation between Chapter 7 and Chapter 13. The government data show that during the period in which the questionnaires were distributed, 62.3% of all non-business cases were Chapter 7 bankruptcies and 37.7% were Chapter 13 bankruptcies.¹⁷⁰ Thus, Chapter 7 debtors appear to be somewhat over-represented in the respondent sample. For this Article, we control for this effect with weighting, as discussed in Part C, *infra*.

¹⁶⁹Four petitioners who filed chapters other than 7 or 13 were incorrectly included in the sample. Thus, the total sample size is 5251 rather than 5255. The 5251 includes the original 5000 case sample plus the 275 cases selected as replacements for those debtors in the original sample to whom correspondence was returned as undeliverable.

¹⁷⁰We used the data for non-business cases from the months of February 2007 and March 2007 and used only the numbers of Chapter 7 and Chapter 13 cases (excluding other chapters of relief) in calculating the percentages by chapter in the distribution. Administrative Office of the U.S. Courts, June 2007 Filings Drop When Compared to 2006 But Slow Upward Crawl Seen in Filings, Table F-2, available at http://www.uscourts.gov/bnkrpctstats/june2007/bankrupt_f2filnm.xls (last visited Sept. 3, 2008) (follow "Table F-2, 12-month" hyperlink).

The respondent sample was similar to the entire population of all consumer bankruptcy cases in distribution between joint petitions (declaring the bankruptcy of both husband and wife) and single petitions (used either for single persons or for one spouse filing on his or her own). For 2007, 29% of bankruptcy cases were joint petitions.¹⁷¹ In the respondent sample, joint petitions were 29.9% of the cases. In both distribution instances (joint-single and Chapter 7-Chapter 13) for which data are available for the entire bankrupt population, the respondent sample is extremely close to the population.¹⁷²

Returned questionnaires were coded into a custom-designed Microsoft Access database. Each coder who input these questionnaire data received extensive training, including instruction on the coding protocols, coding of practice questionnaires, and individual review of each coder's first set of questionnaires. A written instruction manual established consistent protocols, and a single investigator, Dr. Thorne, answered all questions. She also reviewed any suspected errors in the questionnaires (e.g., inconsistencies in a respondent's answers) that coders flagged.

Tests of inter-coder reliability and coding error procedures show a very high degree of data quality. Initially, all data were cleaned of obvious errors and inconsistencies.¹⁷³ Also, 10% of questionnaires (approximately 250 questionnaires) were re-coded a second time by a different coder using a blind procedure (i.e., the second coder did not know the case was being recoded and initial coder did not know the case would be selected for recoding). For each case, the coding for the recoded sample was compared with its original sample and any inconsistencies in coding were identified and individually reviewed for correction. For every 100 cases, there were approximately 10,400 data points and 19 errors. This translates into an error rate of less than 0.2%.

3. Court Records

After a debtor responded to the questionnaire (either by returning a complete or incomplete questionnaire or by indicating a refusal to participate), the bankruptcy court records for the debtor were collected using the federal court's electronic system, Public Access to Court Electronic Records ("PACER"). For every case, the docket sheet, petition, financial schedules, the Statement of Financial Affairs (Form 7), and the Statement of Intention (Form 8) were downloaded. The docket sheet permitted researchers to see the list of all filings and all court orders in every case.

If debtors had amended their schedules, the amendments were

¹⁷¹This figure was provided courtesy of Mike Bickford and his colleagues at AACER. See *supra* note 167.

¹⁷²See note 28, *supra*, for more analysis of potential response bias.

¹⁷³For example, spouses were not to be coded as dependents. If a case had been incorrectly coded this way, the coding was changed to remove the spouse as a dependent. These cleaning criteria were applied to all cases.

downloaded and coded instead of the original schedules. We also downloaded motions seeking relief from the automatic stay or a dismissal of the case, as well as any court orders disposing of these motions. All reaffirmation agreements in the court records were downloaded, and in Chapter 13 cases, additional documents, such as confirmed Chapter 13 plans, were also downloaded. A second round of court record coding was completed over a year after the initial filing to ensure that all relevant motions and reaffirmation agreements were captured.

For each case, these court records were coded into a specially designed database. The variables coded fell into two broad groups: 71 variables of information about the debtor, the court, or the proceedings in the case, and 120 variables of financial information about the debtor. The court record variables for CBP IV were designed to create data that was comparable to the prior CBP studies but with modifications in a few instances to improve the completeness or reliability of the data.

The court record coders were law students who were trained and supervised by principal investigators and by Jeff Paulsen, a University of Illinois law research assistant with experience in the bankruptcy software industry. In turn, Mr. Paulsen worked under the direct supervision of one of the project's principal investigators. The training for coders required them to read a 38-page coding training manual that explained basic principles of bankruptcy law and the purpose of each court record. The manual also described the goals of the data collection and how to code each variable from each record. To ensure their preparation and competency, coders practiced on at least one case from Chapter 7 and Chapter 13. These cases were checked for errors or misunderstandings. Additionally, the coders attended regular group meetings for additional training. Slight variations in court forms, local orders or practices, and attorney idiosyncrasies meant that some information differed in its presentation despite the national uniformity of the bankruptcy petition and schedules. Mr. Paulsen coordinated all inquiries to ensure consistent responses and also sent these responses to the principal investigator overseeing the court record coding. Additionally, an "error" variable was available. If this field was marked, the case received special review, in consultation with the principal investigator, and if necessary, its coding was corrected. The codebook and training manual were updated to reflect the resolution of these situations and to provide consistent guidance.

To test inter-coder reliability, a random sample of 10% of the court records were blind coded a second time concomitantly with the regular coding.¹⁷⁴ Again, coders were not aware whether a particular case would be selected for recoding, or if the case they were coding was an original coding or a recoding. The coding of the 258 recoded cases was compared with the original coding of these same cases, and discrepancies were checked for errors

¹⁷⁴258 cases were blind recoded from the core sample, which is 10% of the respondent sample of 2521.

in the original coding. In each case, 132 discrete variables were examined.¹⁷⁵ In the original coding, 297 errors were identified among the 34,056 variable entries, for an error rate of 0.8%.¹⁷⁶

To test for response bias, we coded and analyzed major financial variables from the court records of 100 non-respondent debtors (people who did not return questionnaires and therefore did not participate in the study). Income, debts, assets, monthly expenses, and prior bankruptcy status were some of the financial variables that were included in the analysis. These data were compared with those from the participants who constituted the core random sample. The analysis suggested that respondents and non-respondents shared similar characteristics on major financial variables and thus that there was no significant sample bias.

4. *Telephone Interviews*

The end of the written questionnaire offered debtors the opportunity to complete a telephone interview for which they would be paid \$50. Of the 2314 completed questionnaires that were returned from the random sample, 2007 (86.7%) of respondents indicated that they were willing to participate in a follow-up telephone interview. Interviews were completed with 1032 respondents, which is 51.4% of those willing to be interviewed, with no indication of a response bias.¹⁷⁷ The telephone interviews were conducted between September 2007 and February 2008. Thus, all interviews were finished no later than one year after the debtors filed their bankruptcy cases.

The telephone interview comprised five sections: general, medical, hous-

¹⁷⁵The variables that categorize non-priority unsecured debts listed on Schedule F by type were excluded from the error check because by necessity and design they required coders to exercise some discretion in coding. These variables are Def Credit Card, Prob Credit Card, Student Loans, Rent, Utilities, and Medical. Debts that did not fit into one of these categories were not categorized but were included in the total unsecured debt.

¹⁷⁶For three variables relating to tallies of creditors, a greater margin of error was used to determine if an error existed. Many schedules contain debts listed "for notice only" or that duplicate prior debts yet are scheduled again to ensure a collection agency or law firm employed by the creditor is listed on the matrix of creditors. In some cases, it was not clear whether a debt was being scheduled for one of these quasi-superfluous purposes. Thus, some discretion had to be exercised in determining the number of different creditors. For the variables Tally Priority E and Tally Sec Debt, a recheck of the original coding was performed only if the original coding and recoding differed by three or more. For the variable Tally Unsec F, a recheck of the original coding was performed only if the original coding and recoding differed by five or more. If the difference between the original coding and the recoding were within these margins, no rechecking was performed.

¹⁷⁷The decision to interview 1032 respondents was based on a goal of conducting at least 1000 interviews. The interviewers were given lists of names from the 2007 volunteers from which they tried to make contact by telephone, email or letter to schedule an interview. If no contact could be made within three weeks (leaving a maximum of three messages), the volunteer was removed from the list and replaced with another. Coincidentally, by the time the goal of 1000 interviews had been achieved, the interview team had exhausted the pool of volunteers. To test for possible response bias, the group of volunteers who completed interviews were compared with the group of volunteers who could not be tracked down and thus did not complete interviews. No significant differences emerged regarding filing status, filing chapter, total assets, total debts, total priority debts, monthly income, home value or other variables.

ing, small business, and military. Broadly speaking, questions in the general section addressed the following issues: employment, credit cards, student loans, insurance, psychological and familial effects of indebtedness, health situations, privations before bankruptcy, and financial circumstances after bankruptcy. The general questions were asked in all interviews. If applicable to their circumstances, debtors participated in subsequent sections of the interview. For example, if a respondent or spouse owned a small business at any time during the two years before bankruptcy, the small business component of the interview was deployed. Thus, most debtors completed multiple sections of the interview, but relatively few participated in all five components. The median length of the interviews was one hour, fifteen minutes.

The interviews were conducted using computer-assisted telephone interviewing. The questions were pre-tested using mock interviews. The interviewers received extensive training on both the computer-assisted telephone interview database and on interview techniques.¹⁷⁸ Specifically, each interviewer completed at least two mock interviews with one another, and one mock interview with Dr. Thorne, the principal investigator who oversaw the telephone interviews, and received feedback. Doctor Thorne also reviewed each person's first interview with a debtor in the sample and maintained frequent contact with the interviewers. Despite a variety of hurdles that are inherent in this type of research,¹⁷⁹ the interviewers achieved a high rate of consistency and interview completion. Logic tests were applied to the telephone database to eliminate inconsistencies or obvious errors, and if necessary, responses to the telephone interview were compared with data from the questionnaire to ensure appropriate corrections.

C. DATA ANALYSIS FOR THIS ARTICLE

This Article compares findings from the new CPV IV with the prior studies. Thus, we employed procedures to ensure that the data from the different studies were standardized as much as possible.

In CBP IV, the sample includes anyone who responded to the mailed questionnaire. To ensure that the CBP IV sample is consistent with the national population it represents, we weight the data by chapter of bankruptcy to mirror the national population of debtors. Because a slightly higher per-

¹⁷⁸All of the interviewers were women. They ranged in age from their mid-20s to late-50s. The lead interviewer, Denise McDaniel, has worked on several prior empirical studies of bankruptcy, including interviewing debtors as part of CBP III.

¹⁷⁹For example, some respondents scheduled interviews but could not be reached at the arranged time or had phones that were disconnected in the interim, which required interviewers to make repeated efforts to complete the interview. Many debtors had irregular work schedules that required interviewers to contact them very early in the morning or late in the evening. In some instances, the stories of many debtors were sufficiently distressful or emotionally draining that interviewers could complete only a few interviews before they experienced fatigue. Note also that a small number ($n=69$) of initial volunteers subsequently requested not to complete the telephone interview for reasons ranging from illness to disinclination to spend cellular phone airtime minutes.

centage of Chapter 7 debtors responded than exist among all filings nationally, Chapter 13 cases were proportionately weighted to correct for this difference. This procedure controls for the slight response differences in debtors in each chapter.¹⁸⁰ The three prior studies are not nationally representative.

Because the studies span over 25 years, the value of the dollar has changed. We adjusted all data to 2007 dollars using the Consumer Price Index, by multiplying each individual piece of data from the prior studies (1981, 1991, and 2001) by the appropriate multiplier.¹⁸¹ The analyses were then performed. All data herein are reported in 2007 dollars.¹⁸²

As with prior studies, we examined the data for outlying observations. In the first CBP, three criteria for outlying cases were developed. Cases were eliminated as outliers if any one of the following was true: total assets exceeded \$500,000 in 1981 dollars, total debt exceeded \$500,000 in 1981 dollars, or annual income exceeded \$65,000 in 1981 dollars. These criteria were inflation-adjusted for each study's year,¹⁸³ and then applied to each of the four inflation-adjusted samples. The proportion of cases removed as outliers was very small and varied only slightly among the four samples.¹⁸⁴

¹⁸⁰We ran all analyses using the unweighted data as well. The comparative findings with the prior studies were identical using either the weighted or unweighted CBP IV sample.

¹⁸¹The inflation-adjustment figure used was for the first half of 2007 from the Consumer Price Index—All Urban Consumers—Not Seasonally Adjusted (Series ID CUUR0000SA0). That figure was 205.709 with a base period of 1982-1984. See Bureau of Labor Statistics, <http://www.bls.gov/cpi> (last visited Sept. 3, 2008) (follow "Databases & Tables" hyperlink; then follow "Top Picks" hyperlink next to "All Urban Consumers (Current Series) (Consumer Price Index-CPI)").

¹⁸²Because the data were inflation-adjusted to 2007 dollars, the numbers reported for these samples do not match the numbers in prior published studies in which the data were inflation-adjusted to a different year. To check that our analyses were consistent with our past findings, we also ran the original data (without inflation-adjustment) for each year and compared it with prior published findings of such data.

¹⁸³The outlier criteria inflation-adjusted to 2007 dollars and applied to the CBP IV sample were: total assets greater than \$1,129,756, total debt greater than \$1,129,756, and income greater than \$146,869.

¹⁸⁴From the 1981 sample, 1.8% (n=27) of the cases were eliminated as outliers. From the 1991 sample, 0.9% (n=6) of the cases were eliminated as outliers. From the 2001 sample, 0.9% (n=11) of the cases were eliminated as outliers. From the 2007 sample, 0.7% (n=18) of the cases were eliminated as outliers.

APPENDIX II: QUESTIONNAIRE FROM 2007 CONSUMER BANKRUPTCY PROJECT

Unique ID _____

**The Consumer Bankruptcy Project
2007**

Researchers at the following universities are participating in the Consumer Bankruptcy Project 2007:
 Harvard University
 Ohio University
 University of Illinois
 University of Iowa
 University of Michigan
 University of North Carolina

If you have questions about the Consumer Bankruptcy Project 2007 or this survey, please call
 Dr. Deborah Thomas toll-free at 866-391-8291.

\$50 for a Telephone Interview

We would like to conduct confidential follow-up telephone interviews with participants in our study. After you have filled out this questionnaire, if you are interested in participating in the telephone interviews, please complete the form on page 7.

The non-profit charities that fund us have made it possible for us to pay participants \$50 as a thank-you for completing the telephone interview.

All information that you provide during the telephone interview is confidential. Your name will never be associated with any of your answers, and no one outside of the research project will have access to your responses.

---- FAMILY ----

1. What is your current marital status?
 Never married
 Married
 Separated
 Divorced
 Widowed
 Other _____
2. Do you live with a spouse or permanent partner?
 Yes
 No
3. Are you, or a spouse or partner, FINANCIALLY RESPONSIBLE for ANYONE (for example, any children, step-children, parents, or ex-spouse)?
 Yes
 No → *Skip to Question 4*
4. Please indicate their ages, their relationships to you (for example, daughter, stepson, mother, ex-spouse), and whether or not they live with you.

Person 1:	Age _____	Relationship to you: _____	Does he/she live with you?	Yes No
Person 2:	Age _____	Relationship to you: _____	Does he/she live with you?	Yes No
Person 3:	Age _____	Relationship to you: _____	Does he/she live with you?	Yes No
Person 4:	Age _____	Relationship to you: _____	Does he/she live with you?	Yes No
Person 5:	Age _____	Relationship to you: _____	Does he/she live with you?	Yes No
5. If you are financially responsible for more than five people, please use the lines below to indicate their ages, relationships to you, and whether or not they live with you.
6. BEFORE the bankruptcy, did your debts or financial problems negatively affect your children?
 Not applicable; no children
 Yes
 No
7. BEFORE your bankruptcy, did debts or financial problems cause increased tension between you and your spouse or partner?
 Not applicable; no spouse or partner
 Yes
 No

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→ If you currently live with a SPOUSE or PERMANENT PARTNER, ←
please provide answers in BOTH columns.

	You	Your Spouse or Partner
6. What is your sex?	Male Female	Male Female
7. What is your age?	_____	_____
8. With which group do you identify? <i>Check all that apply.</i>	African-American or Black Asian-American Hispanic or Latino/a White or Caucasian Other: _____ (please specify) None	African-American or Black Asian-American Hispanic or Latino/a White or Caucasian Other: _____ (please specify) None

---- EDUCATION ----

9. What is the highest degree or level of school COMPLETED?	Some education, NO diploma or GED High school graduate (diploma or equivalent, GED) Some college credit, but less than 1 year One or more years of college, but NO degree Associate degree (for example, AA or AS) Bachelor's degree (for example, BA, BS, AB) Master's degree (for example, MA, MS, MEd, MEdA) Doctorate or professional degree (for example, PhD, MD, JD) Other: _____ (please describe)	Some education, NO diploma or GED High school graduate (diploma or equivalent, GED) Some college credit, but less than 1 year One or more years of college, but NO degree Associate degree (for example, AA or AS) Bachelor's degree (for example, BA, BS, AB) Master's degree (for example, MA, MS, MEd, MEdA) Doctorate or professional degree (for example, PhD, MD, JD) Other: _____ (please describe)
---	---	---

10. If you, or a spouse or partner, were FINANCIALLY RESPONSIBLE for any STUDENT LOANS at the time of the bankruptcy, whose loans were they? *Check all that apply.*
Not applicable; not financially responsible for any student loans → Skip to Question 11

You
Your spouse's or partner's
Someone else's (for example, any children or step-children)

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2. At the time of the bankruptcy, what was the TOTAL amount of student loans for which you and your spouse or partner were FINANCIALLY RESPONSIBLE?

Less than \$10,000
\$10,000-\$20,000
More than \$20,000

6. Did owing these student loans contribute substantially to your need to file bankruptcy?

Yes
No

---- HOME ----

11. Which one of the following best explains your CURRENT living situation? Do you:

Own, or make mortgage payments on, your home
Rent
Live with someone without paying rent
Other (please specify): _____

12. Did you own a home at ANY time during the past FIVE years?

Yes
No → Skip to Question 14

13. During that time, did you do either of the following? *Check all that apply.*
Lose your home in foreclosure or deed it back to the bank because of financial difficulties
Sell your home for financial reasons
Neither of the above

---- HEALTH ----

	You	Your Spouse or Partner
14. Do you CURRENTLY have any form of health insurance? This includes private insurance from an employer or that you purchased, Military or Veterans' Health care, Medicare or Medicaid.	Yes No	Yes No
15. Did you have health insurance CONTINUOUSLY throughout the TWO years before your bankruptcy?	Yes No	Yes No
16. Do ALL of your dependents listed in Question 3 CURRENTLY have health insurance?	Not applicable; no dependents Yes No	

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17. Did ALL of your dependents listed in Question 3 have health insurance CONTINUOUSLY throughout the TWO years before your bankruptcy?
 Not applicable, no dependents
 Yes
 No
18. During the TWO years before the bankruptcy, were you, as a spouse or partner, FINANCIALLY RESPONSIBLE for ANY medical bills, INCLUDING prescription medication or co-payments, that were NOT covered by insurance?
 Yes
 No → *SKIP to Question 19*
- a. How did you, as a spouse or partner, pay for the medical bills or prescriptions that were not covered by insurance? Did you: Check all that apply.
 Pay with cash, check, or debit card
 Pay with a regular credit card
 Pay with a medical credit card (such as CareCredit, CareCredit, or MediCredit)
 Pay with money from a home equity loan or line of credit
 Agree to a payment plan with the medical provider
 Something else (please specify): _____
- b. During the TWO years before the bankruptcy, approximately how much were the medical bills, INCLUDING prescriptions and co-payments, that were NOT covered by insurance? Please give your best estimate, even if you aren't sure.
 Less than \$1,000
 \$1,000 - \$5,000
 \$5,001 - \$10,000
 More than \$10,000

— EMPLOYMENT —

- | | You | Your Spouse or Partner |
|--|---|--|
| 19. For any of the following reasons, did you, at ANY time during the TWO years before the bankruptcy, lose TWO WEEKS OR MORE of work-related income? <u>Check all that apply.</u> | No
Not employed since January 2005
Yes, you were laid off or fired
Yes, you were ill or injured
Yes, you took time off to care for a sick family member
Yes, for other reasons | No
Not employed since January 2005
Yes, he/she was laid off or fired
Yes, he/she was ill or injured
Yes, he/she took time off to care for a sick family member
Yes, for other reasons |
| 20. What is your CURRENT employment status? <u>Check all that apply.</u> | Employed or self-employed
Not employed, seeking work
Not employed, not seeking work
Not employed, unable to work for medical reasons
Retired | Employed or self-employed
Not employed, seeking work
Not employed, not seeking work
Not employed, unable to work for medical reasons
Retired |
| 21. What kind of work do/did you do? | _____
(please describe) | _____
(please describe) |

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- | | You | Your Spouse or Partner |
|--|--|--|
| 22. At ANY time during the TWO years before the bankruptcy, were you SELF-EMPLOYED? | Yes
No → <i>Skip to Question 23</i> | Yes
No → <i>Skip to Question 23</i> |
| a. At the time you filed bankruptcy, were you self-employed? | Yes
No | Yes
No |
| b. Did the business have employees other than yourself, or a spouse or partner? <u>Check all that apply.</u> | Yes, at some time during the two years before bankruptcy
Yes, at the time you filed bankruptcy
No, never had employees | Yes, at some time during the two years before bankruptcy
Yes, at the time you filed bankruptcy
No, never had employees |
| c. Was the business either incorporated or a limited liability company (LLC)? | Yes
No | Yes
No |
| 23. Are you now, or have you ever been, a member of the U.S. Armed Forces, including the Reserves or National Guard? | Yes, currently serve in the U.S. Armed Forces
Yes, previously served in the U.S. Armed Forces
No, have NEVER served in the U.S. Armed Forces | Yes, currently serve in the U.S. Armed Forces
Yes, previously served in the U.S. Armed Forces
No, have NEVER served in the U.S. Armed Forces |

— TRYING TO COPE BEFORE FILING —

24. During the TWO years before the bankruptcy, did EITHER you or a spouse or partner DO, or TRY TO DO, any of the following things in order to make ends meet? Check all that apply.
- Worked extra hours or got another job
- Cashed out or borrowed from a retirement, 401k, pension account, or life insurance
- Refinanced your home, took on a home equity loan or line of credit, or took on a debt consolidation loan that was secured by your home
- Sold your home
- Asked creditors, such as landlords or credit card companies, to work with you on the payments
- Sold or pawned a car, furniture, or other personal property
- Consolidated debts with a credit card or a new loan
- Used a payday loan business (for example, Check to Cash) or ran into lenders to borrow money or take a cash advance
- Put securities on the credit card (for example, food or monthly bills)
- Accepted or borrowed money from family or friends
- Accepted or borrowed money from a religious group or a charity
- Something else (please specify): _____

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--- WHAT WENT WRONG? ---

25. People file bankruptcy for a number of different reasons. Why did you, or a spouse or partner, file bankruptcy? *Check all that apply.*

Decline in income

Financial problems that resulted from being self-employed

Illness or injury that caused you, or your spouse or partner, to miss two weeks or more of work

Medical problems experienced by you or your spouse or partner

Medical problems of other family members (such as children or parents)

Medical or health care bills, including prescription medications

Increase in the number of people living in your household (for example, through birth, adoption, or change in living arrangements)

Death of a family member

Family break up because of divorce or separation

Your mortgage payment increased beyond what you could afford

You wanted to refinance your mortgage to lower your mortgage payments, but you couldn't

A lender threatened to foreclose on your home

Problems controlling spending

Charged or tricked (for example, by creditors, lenders, or salespeople)

Interest and fees on credit cards were overwhelming

Aggressive collection efforts by creditors

Problems with gambling

Tried to financially help out family or close friends

Victim of disaster (for example, flood or fire)

Something else (please specify): _____

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EARN \$50

HELP US LEARN MORE ABOUT BANKRUPTCY SO WE CAN HELP OTHERS

We would like to conduct confidential follow-up telephone interviews with participants in our study. During the interview, you will be asked questions similar to the ones you just answered.

If you are interested in participating, please fill out the information below.

We hope you will be willing to further help us with the research and accept the \$50 as our thank you.

Name (please print): _____ Signature: _____

Telephone number: _____ E-mail address: _____

If your telephone number changes, please feel free to call us toll-free at 866-391-8201 or send an email to Professor Thurne at thurne@ohio.edu.

Again, all of your responses are completely confidential. Your name will never be associated with any of your answers, and no one outside of the research project will have access to the information that you provide.

If you are comfortable sharing it with us, we would like to hear the story of your bankruptcy and what happened to you. Please feel free to write as much as you want in the space below.

THANK YOU VERY MUCH FOR YOUR HELP WITH THE RESEARCH

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APPENDIX III: BASIC ECONOMIC DATA OF BANKRUPTCY FILERS

(reported in constant 2007 dollars, weighted by chapter)

1981	income	assets	total debt	unsecured debt	secured debt
mean	35693	66400	87311	35057	52104
standard deviation	21736	90556	123992	70728	87235
25th percentile	21399	6786	22050	8654	5881
median	33871	31725	47402	15952	21717
75th percentile	48242	100274	100490	31521	68848
N	1289	1490	1496	1495	1501
t-test compared with 1991	4.87	1.91	0.68	1	0.68
P value	< 0.0001	0.0563	0.4988	0.3174	0.4953
t-test compared with 2001	6.09	3.88	4.22	1.84	4.06
P value	< 0.0001	0.0001	< 0.0001	0.0663	< 0.0001
t-test compared with 2007	6.82	8.85	10.53	6.91	9.15
P value	< 0.0001	< 0.0001	< 0.0001	< 0.0001	< 0.0001
Wilcoxon compared with 1991	-5.3125	-3.0775	-0.4314	1.3396	-3.7528
P value	< 0.0001	0.0021	0.6662	0.1804	0.0002
Wilcoxon compared with 2001	-5.9776	4.123	9.3192	7.3958	2.9464
P value	< .0001	< .0001	< .0001	< .0001	0.0032
Wilcoxon compared with 2007	8.8168	-7.0859	-14.8919	-20.8372	-3.2165
P value	< .0001	< .0001	< .0001	< .0001	0.0013
1991	income	assets	total debt	unsecured debt	secured debt
mean	30778	58467	83503	31927	49316
standard deviation	18475	86648	117176	60765	91449
25th percentile	18096	4780	22938	9117	829
median	27126	19302	44588	18183	15068
75th percentile	40137	87502	98856	32748	69389
N	628	671	683	683	683
t-test compared with 2001	0.04	4.79	4.34	2.71	3.88
P value	0.96	< 0.0001	< 0.0001	0.007	< 0.0001
t-test compared with 2007	0.1	7.84	8.58	6.83	7.17
P value	0.92	< 0.0001	< 0.0001	< 0.0001	< 0.0001
Wilcoxon compared with 2001	-0.3565	-6.1958	-8.0141	-5.0054	-5.0649
P value	0.7215	< 0.0001	< 0.0001	< 0.0001	< 0.0001
Wilcoxon compared with 2007	1.3872	-8.4372	-11.8439	-14.9421	-5.2995
P value	0.1654	< 0.0001	< 0.0001	< 0.0001	< 0.0001

2001	income	assets	total debt	unsecured debt	secured debt
mean	30743	80787	106054	39731	65635
standard deviation	18893	102164	104215	60105	86252
25th percentile	18096	7903	31537	11279	2146
median	27840	42592	73834	23594	28970
75th percentile	40159	124006	146867	46458	106314
N	1230	1210	1236	1233	1234
t-test compared with 2007	0.175	4.63	6.16	4.75	4.96
P value	0.86	< 0.0001	< 0.0001	< 0.0001	< 0.0001
Wilcoxon compared with 2007	2.1306	-2.2934	-4.1743	-10.9487	-0.4646
P value	0.0331	0.0218	< 0.0001	< 0.0001	0.6422
2007	income	assets	total debt	unsecured debt	secured debt
mean	30862.9	10087798	133929.78	49718.77	84567.86
standard deviation	19882.31	132267.62	140243.95	59742.14	118728.83
25th percentile	17196	9600	38525	18351	901
median	27132	53120	87261	33882	35000
75th percentile	40608	141885	181057	59654	126613
N	2419	2375	2378	2371	2371

APPENDIX IV: NET WORTH DATA OF BANKRUPTCY FILERS
(reported in constant 2007 dollars, weighted by chapter)

Net Equity	1981	1991	2001	2007
mean	-20696	-25401	-38454	-32995
standard deviation	93591	91370	389527	72378
25th percentile	-26113	-32950	-40188	-52101
median	-11220	-15897	-19062	-24364
75th percentile	4259	-3754	-4087	-6412
N	1487	671	1219	2373
t-test compared with 1991	1.1	—	—	—
P value	0.2721	—	—	—
t-test compared with 2001	1.56	1.12	—	—
P value	0.1201	0.2648	—	—
t-test compared with 2007	4.25	3.05	0.42	—
P value	<0.0001	0.002	0.6777	—
Wilcoxon compared with 1991	-4.345	—	—	—
P value	<.0001	—	—	—
Wilcoxon compared with 2001	-8.0415	2.6312	—	—
P value	<.0001	0.0085	—	—
Wilcoxon compared with 2007	14.2847	7.141	5.2585	—
P value	<.0001	< 0.0001	< 0.0001	—

